

1  
2 UNITED STATES DISTRICT COURT

3 NORTHERN DISTRICT OF OHIO

4 EASTERN DIVISION

5 Case No. 1:15-cv-1586

6 -----x

7 ATSCO HOLDINGS CORP., et al.,

8 Plaintiffs,

9 v.

10 AIR TOOL SERVICE COMPANY, et al.,

11 Defendants.

12 -----x

13  
14 REMOTE VIDEOTAPED DEPOSITION OF JOSEPH MOLINO

15 Friday, November 6, 2020

16  
17  
18 Reported by:

19 Amy A. Rivera, CSR, RPR, CLR

20 JOB NO. 186138

Page 2

1  
2 November 6, 2020  
3 11:04 a.m.  
4  
5 REMOTE VIDEOTAPED deposition of  
6 JOSEPH MOLINO held pursuant to Notice, before Amy A.  
7 Rivera, Certified Shorthand Reporter, Registered  
8 Professional Reporter, Certified LiveNote Reporter,  
9 and a Notary Public of the States of New York, New  
10 Jersey, and Delaware.  
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1 JOSEPH MOLINO  
2 VIDEOGRAPHER: Good morning,  
3 counselors.  
4 My name is Kevin Marth. I am a legal  
5 videographer today in association with TSG  
6 Reporting, Inc.  
7 Due to the severity of the COVID-19  
8 virus and following the practice of social  
9 distancing, I will not be in the same room  
10 with the witness. Instead, I will record  
11 the deposition remotely.  
12 Additionally, our court reporter  
13 today, Ms. Amy Rivera, also will not be in  
14 the same room and will swear the witness  
15 remotely.  
16 Do all parties stipulate to the  
17 validity of this video recording and remote  
18 swearing and that it will be admissible in  
19 the courtroom as if it had been taken  
20 following Rule 30 of the Federal Rules of  
21 Civil Procedure and the state's rules where  
22 the case is pending?  
23 MR. MUETHING: Yes.  
24 MR. COLLINS: Yes.  
25 VIDEOGRAPHER: This marks the start of

Page 3

1  
2 R E M O T E A P P E A R A N C E S:  
3 KEATING MUETHING & KLEKAMP  
4 Attorneys for Plaintiffs Atsco Holdings and  
5 Hy-Tech Machine  
6 One East Fourth Street  
7 Cincinnati, Ohio 45202  
8 BY: BRIAN MUETHING, ESQ.  
9  
10 THRASHER, DINSMORE & DOLAN  
11 Attorneys for Defendants  
12 1111 Superior Avenue  
13 Cleveland, Ohio 44114  
14 BY: TIM COLLINS, ESQ.  
15  
16  
17 A L S O P R E S E N T:  
18 Richard Goodman, Esq. - P&F Industries  
19 Rick Sabath  
20 Michael Sevilla  
21 Kevin Marth, Legal Video Specialist  
22  
23  
24  
25

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1 JOSEPH MOLINO  
2 media labeled No. 1 of the remote video  
3 deposition of Joseph Molino, in the matter  
4 of Atsco Holdings Corp., et al., versus Air  
5 Tool Service Company, et al., in the United  
6 States District Court for the Northern  
7 District of Ohio, Eastern Division.  
8 The deposition today is being held on  
9 November 6, 2020, and the time on the video  
10 monitor is 11:04 a.m.  
11 My name is Kevin Marth. I'm the legal  
12 video specialist today in association with  
13 TSG Reporting, Inc.  
14 Our court reporter today is Ms. Amy  
15 Rivera, also in association with TSG.  
16 At this time, would counsel please  
17 state your appearances for the record.  
18 MR. MUETHING: Good morning, everyone.  
19 Brian Muething, Keating, Muething &  
20 Klekamp, for plaintiffs Atsco Holdings and  
21 Hy-Tech Machine.  
22 MR. COLLINS: Tim Collins, Thrasher,  
23 Dinsmore & Dolan in the Cleveland office,  
24 and I represent the defendants.  
25 And also in attendance at the moment

<p style="text-align: right;">Page 6</p> <p>1 JOSEPH MOLINO</p> <p>2 is Rick Sabath, and at some juncture, he'll</p> <p>3 be dropping off, and Michael Sevilla will be</p> <p>4 attending.</p> <p>5 MR. MUETHING: Mr. Collins reminds me</p> <p>6 that I should have mentioned that Richard</p> <p>7 Goodman, general counsel for P&amp;F Industries,</p> <p>8 is with me as well as, of course,</p> <p>9 Mr. Molino, the witness.</p> <p>10 VIDEOGRAPHER: At this time, would the</p> <p>11 court reporter please swear in the witness,</p> <p>12 and we may proceed.</p> <p>13 J O S E P H M O L I N O, having been duly</p> <p>14 sworn, testified as follows:</p> <p>15 EXAMINATION</p> <p>16 BY MR. MUETHING:</p> <p>17 Q. Good morning, Mr. Molino, and everyone</p> <p>18 else.</p> <p>19 Again, for the record, my name is</p> <p>20 Brian Muething, and I represent the plaintiffs in</p> <p>21 this matter.</p> <p>22 I know from having spoken to you in</p> <p>23 the past that you go by "Joe."</p> <p>24 Is it okay if I call you that today?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 7</p> <p>1 JOSEPH MOLINO</p> <p>2 Q. Joe, if you have any technical issues</p> <p>3 throughout the day, if you can't hear anyone --</p> <p>4 that that may happen based on some experience --</p> <p>5 feel free to let us know.</p> <p>6 If you need to take a break, of</p> <p>7 course, we'll try to accommodate that. So just</p> <p>8 feel free to let us know if there are any issues.</p> <p>9 A. Yes.</p> <p>10 Q. I saw your mouth moving, Joe, but I</p> <p>11 didn't hear you.</p> <p>12 Can you just say something --</p> <p>13 A. Can you hear me now? Can you hear me?</p> <p>14 Okay. Sorry.</p> <p>15 Q. Okay. Joe, can you tell the Court</p> <p>16 your education background, please?</p> <p>17 A. Yes.</p> <p>18 I have a BA in accounting from Loyola</p> <p>19 University of Maryland. I have a CPA certificate</p> <p>20 as well, and I've an M.B.A. in finance from the</p> <p>21 Wharton School at University of Pennsylvania.</p> <p>22 Q. Just can you give us a brief</p> <p>23 description of your employment history?</p> <p>24 A. Yes.</p> <p>25 I worked at an international</p>
<p style="text-align: right;">Page 8</p> <p>1 JOSEPH MOLINO</p> <p>2 accounting firm called Ernst &amp; Young -- well, it</p> <p>3 was Ernst &amp; Whinney then -- for about four years</p> <p>4 before getting my M.B.A.</p> <p>5 And since then, I have been chief</p> <p>6 financial officer and/or chief operating officer</p> <p>7 of a number of small and medium-size companies for</p> <p>8 the last 20 -- approximately 23 years here as CFO,</p> <p>9 and then ultimately, chief operating officer and</p> <p>10 CFO, which is my current title.</p> <p>11 Q. Thank you.</p> <p>12 And you said, "here."</p> <p>13 Can you describe --</p> <p>14 A. I apologize. P&amp;F Industries.</p> <p>15 Q. And how does P&amp;F Industries relate to</p> <p>16 the company, for example, Hy-Tech Machine, that is</p> <p>17 a plaintiff in this matter?</p> <p>18 A. Yes, Hy-Tech Machine is a wholly owned</p> <p>19 subsidiary of Continental Tool, which is a wholly</p> <p>20 owned subsidiary of P&amp;F Industries.</p> <p>21 Q. Thank you.</p> <p>22 You mentioned, Mr. Molino, that you</p> <p>23 have been the CFO and/or the COO. And take those</p> <p>24 functions one at a time, if you would, and let us</p> <p>25 know what your job duties generally entail.</p>	<p style="text-align: right;">Page 9</p> <p>1 JOSEPH MOLINO</p> <p>2 A. I'm -- for CFO, I'm in charge of</p> <p>3 relationships with our banks, and the accounting</p> <p>4 function reports to me as well.</p> <p>5 In addition to that, as we are a</p> <p>6 public company, I am considered the chief</p> <p>7 accounting officer. So I sign all of the</p> <p>8 documents that would need to be filed with the</p> <p>9 Securities and Exchange Commission. Those staff</p> <p>10 that produces those documents reports to me as</p> <p>11 well. So that's really more or less my CFO</p> <p>12 function.</p> <p>13 As chief operating officer, I am in</p> <p>14 charge of all the day-to-day operations of P&amp;F.</p> <p>15 The subsidiary executives report to me directly,</p> <p>16 and I, in turn, report to the chairman and</p> <p>17 president of the company as to the company</p> <p>18 strategy and, you know, day-to-day execution of</p> <p>19 that strategy, and as well as I have been</p> <p>20 typically the lead on all the mergers and</p> <p>21 acquisitions activities since I've been here.</p> <p>22 Q. You -- I want to pick up on that last</p> <p>23 point.</p> <p>24 Now, Joe, just can you give the Court</p> <p>25 a flavor for the scope of the merger and</p>

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1 JOSEPH MOLINO

2 acquisition activities then, say the last 15 years

3 of P&F, has this been a one-time thing or has it

4 been broader than that?

5 A. No, we're a fairly inquisitive

6 company. That's one of the ways we have grown.

7 I would say since I've been here, we

8 probably worked on, you know, several dozen

9 transactions, and I've been involved in meeting

10 with the buyer and the seller, representing the

11 company, responsible for due diligence, as well as

12 very involved in all the documentation.

13 Of course, we've got lawyers to help

14 out with that as well. But, you know, a lot of --

15 a lot of -- a lot of transactions in our history

16 here.

17 Q. Thank you.

18 You mentioned a concept of due

19 diligence.

20 Can you tell the Court what that is,

21 what you mean by that?

22 A. Sure.

23 Once there's a meeting of the minds

24 between your buyer and a seller, and typically

25 some sort of document, we'll call it a letter of

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2 is -- you know, it is done anyway.

3 Q. So a couple of follow-up questions

4 about that, Joe.

5 You said that the due diligence can be

6 somewhat limited in scope.

7 What did you mean by that?

8 A. Well, typically, the -- the seller

9 limits the amount of time that the buyer has.

10 There's usually an agreed-upon period -- it could

11 be 30 days, it could be 60 days, it could be 90

12 days -- when all the diligence has to be done, and

13 then, again, limited in scope in that you are

14 typically not allowed to speak to everybody in the

15 target, and it's often very difficult -- more

16 often than not, you're not really allowed to see

17 the operation running as it would be running in a

18 normal time.

19 Typically, you go in after hours or on

20 the weekend, so if you're buying a manufacturing

21 company, which is for the most part the sorts of

22 things we buy, you're not always able to see the

23 machines running, the employees running the

24 machines, and the business in full operation.

25 Q. And just to be clear, why is that

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2 intent, to establish what the parties agreed to

3 work together towards to continue the agreement.

4 The due diligence period is an

5 opportunity for the buyer to assess various

6 aspects of the -- the target company by reviewing

7 documents in the various functions, whether it be

8 financial, marketing, customers, operations, and

9 as well as speaking with various employees of

10 the -- of the target company. Typically, you're

11 allowed an opportunity to visit the facility.

12 So that's the due diligence process.

13 You review that, and you attempt to assess whether

14 the initial agreed-upon price is reasonable in

15 light of what -- what you see.

16 Due diligence is not a replacement for

17 an audit, or anything like that. And typically,

18 it is limited in scope, just sort of the

19 practicalities of the matter. It's difficult

20 sometimes to get -- get into the facility for much

21 more than one or two times, and obviously, during

22 that period, the seller is usually trying to keep

23 the transaction quiet for many reasons.

24 So it is difficult to get as much of

25 the appeal for the operation as one might, but it

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2 typically your experience?

3 A. Well, generally, the seller wants to

4 keep the potential transaction secret, which is

5 understandable. Employees get nervous if they are

6 aware that a company may be -- may be sold, for

7 obvious reasons.

8 MR. COLLINS: Brian, is your phone

9 near the microphone you're using? Because

10 we're getting feedback from you. Sometimes

11 phones cause those problems, or there's

12 something else is bumping up against your

13 microphone.

14 MR. MUETHING: Thanks for telling me,

15 Tim. I don't know because I'm not, in my

16 mind, doing anything different than I have

17 been, but I will try to --

18 MR. COLLINS: It's better just now. I

19 don't know what's happening, but we're

20 getting feedback.

21 MR. MUETHING: Thank you for telling

22 me. I'll keep an eye on it. Thank you.

23 BY MR. MUETHING:

24 Q. Mr. Molino, is a valuation of a target

25 company's machinery or equipment part of due

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1 JOSEPH MOLINO

2 diligence?

3 A. Yes, typically.

4 Q. And how does that process work?

5 A. Well, you know, sometimes you'll bring

6 in an expert.

7 I'm -- I'm not an expert in machinery.

8 I don't have a degree in engineering, or anything

9 like that. So we'll rely on our internal people

10 who are familiar with those machines, typically,

11 and how they run, and in some cases, we'll bring

12 in outside experts to help us place a value on it.

13 But, again, the assumption is that the

14 machines are in good working order and, you know,

15 that's how -- that's part of the valuation

16 process. If you make an assumption they're not in

17 good working order, you have a different value

18 that you place on it.

19 Q. Not being able to see sometimes, you

20 know, an operation as it's actually making tools,

21 for example, how does that situation affect, you

22 know, the due diligence on equipment?

23 A. Well, again, if you can't see the

24 parts being made, you don't exactly know, you

25 know, what the value of the equipment might be.

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2 involved in, there's specific representations that

3 the equipment is in good working order and of the

4 quantity and quality necessary to perform the

5 operations, you know, to run the company.

6 Q. And let me unpack just a couple of

7 things that you said, Joe.

8 You mentioned a document or something

9 called an "asset purchase agreement."

10 Can you tell the Court what a document

11 like that is, in your experience?

12 A. Sure.

13 It's, as I said maybe earlier -- I'm

14 not certain if I said earlier that there's a

15 letter of intent that's typically signed, and you

16 work towards the -- a definitive agreement, which

17 is the final understanding of the parties.

18 In this case, as I said, an asset

19 purchase agreement is where you're buying a

20 business but you're structuring the transaction as

21 the purchase of assets. You can also structure it

22 as a purchase of stock, and there are probably a

23 number of other ways to do it.

24 But regardless of which structure, the

25 document lays out the purchase price, how much is

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2 Again, you're making an assumption and

3 the apparent assumption is that -- that it's

4 making good parts, unless you're told otherwise,

5 that knowledge itself, clearly, at the end of the

6 day.

7 Q. If there are certain limitations on

8 the due diligence process, then how does a buyer

9 assure itself of the quality of what it thinks

10 it's buying?

11 MR. COLLINS: Objection.

12 Q. Is there a mechanism -- well, let me

13 back up, Joe.

14 If -- if, in your experience, you have

15 found there are limitations on a due diligence

16 process, how have you taken steps to deal with

17 that situation?

18 MR. COLLINS: Objection.

19 Q. You can answer.

20 A. Typically, the asset purchase

21 agreement or stock purchase agreement would have a

22 section. It's called "Representations and

23 Warranties."

24 Very typically in that section, and

25 certainly in all the documents we -- we are

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1 JOSEPH MOLINO

2 in cash, how much goes into escrow, and the

3 various assets that are being purchased,

4 liabilities that are being assumed, and

5 representations and warranties of the seller and

6 the buyer with respect to the business and the

7 transaction.

8 Q. Okay. With respect to the

9 representations and warranties that you mentioned,

10 can you describe for the Court in more detail what

11 those are and how those function?

12 A. Sure.

13 There are a number of them. With

14 respect to the assets that are being purchased,

15 you typically list the assets, and there's a

16 representation for each of them.

17 For example, one would -- one of them

18 would be that the inventory is -- is salable and

19 not obsolete. And, you know, are the parties

20 sufficient to provide sufficient working capital

21 for the business. The accounts receivable is

22 fully collectible, and as I said earlier, the

23 equipment is in good working order, properly

24 maintained, and of sufficient quantity to run the

25 operation in the manner that has been told to the

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1 JOSEPH MOLINO

2 potential buyer.

3 And there are other -- there are other

4 reps and warranties, but those are the -- those

5 are the most important ones. There are legal ones

6 as well.

7 MR. MUETHING: Well, I do hear that.

8 I don't know why that happens. Sorry.

9 BY MR. MUETHING:

10 Q. Joe, when you think about the deals

11 that you have been involved in, are the

12 representations and warranties, are they always

13 the same in the documents?

14 A. No, they're not always the same.

15 If -- if you're paying what we

16 consider full price for a business, you know, at

17 the high end of the valuation, you're expecting a

18 business that's fairly pristine, no issues with

19 any of the assets, very limited liability issues.

20 So you rely on -- as I said earlier,

21 the fact that the due diligence is somewhat

22 limited, you rely on the representations and

23 warranties to give you comfort that everything

24 is -- is what it is.

25 If, for example, that is not the case,

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2 during the course of negotiations address those

3 issues.

4 Q. Thanks, Joe.

5 You mentioned just one or two words

6 ago about negotiations.

7 Are representations and warranties

8 subject to negotiations?

9 MR. COLLINS: Objection.

10 A. Sure. They're all there, absolutely.

11 Typically, an agreement is produced by

12 one side or the other, usually the buyer, and the

13 document itself is negotiated back and forth

14 several or many times -- many times to address the

15 very specific language regarding everything,

16 including the reps and warranties.

17 Q. Joe, the chat function on the Zoom, do

18 you see that I've uploaded a particular document

19 there?

20 A. Let's see, chat function...

21 Okay, yeah, I see the chat. Yeah, I

22 do.

23 Q. Could you see if you could open that

24 document and display it so that you can review it?

25 A. Sure.

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2 what's typically done -- and we've done this

3 plenty of times -- if a piece of equipment is an

4 issue, it is -- you know, it's near the end of its

5 useful life or it has problems consistently

6 producing parts or, you know, it's about to

7 require a lot of repair, typically, the seller

8 will let the buyer know about that, and that is

9 stated in the document and scheduled, and then the

10 buyer has to determine if that requires some

11 adjustment to the purchase price.

12 So it's obviously -- once that

13 disclosure is made, decisions are made around

14 that, and you can choose to move forward. You can

15 lower -- you can change the purchase price, you

16 can address it via the meetings, but, typically,

17 there are ways to deal with that if that is, in

18 fact, the case.

19 And the same thing goes for other

20 assets that might be impaired. You know, maybe

21 there's some inventory that's not completely

22 saleable or maybe there's an issue with the intent

23 to collecting on some accounts.

24 Those are brought forward, scheduled,

25 discussed, and, you know, the buyer and the seller

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2 Q. And then let me know when you have it,

3 please.

4 A. So it's asking me to save it, and then

5 I guess I'll be able to reach it later? Is that

6 how this is done?

7 Q. Yes.

8 A. Okay. Now, where would I go find it?

9 Q. I think if you just click on it again

10 in the chat function, Joe, you should be able to

11 open it.

12 A. Okay. Let me just do that.

13 Saying that you don't have permission

14 to save in this location. Would you like to save

15 in the linear folder instead?

16 So I guess --

17 MR. MUETHING: Let's go off the record

18 for a moment, please.

19 VIDEOGRAPHER: We are going off the

20 record at 11:24 a.m.

21 (Recess.)

22 VIDEOGRAPHER: We are back on the

23 record at 11:30 a.m.

24 MR. MUETHING: Thank you.

25

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1 JOSEPH MOLINO

2 BY MR. MUETHING:

3 Q. Joe, do you have a document that I've

4 attempted to upload through the Zoom feature that

5 was previously marked PX-16, and the first words

6 are "Asset purchase agreement"?

7 (Plaintiffs' Exhibit 16, Asset

8 purchase agreement, previously marked for

9 identification, shown at this time.)

10 A. Yes.

11 Q. Have you seen this document before?

12 A. Yes.

13 Q. Could you identify it for the Court,

14 please.

15 A. It is the -- it appears to be the

16 final definitive agreement between the parties.

17 Q. In connection with a particular

18 transaction?

19 A. Yeah. In connection with the purchase

20 of Atsco by Hy-Tech.

21 MR. MUETHING: Plaintiffs seek to

22 admit PX-16.

23 MR. COLLINS: Brian, do you know that

24 we'll deal with the admission of exhibits

25 later. So I'll reserve my objections.

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2 warranties?

3 A. They're almost exclusively

4 representations and warranties of the seller.

5 There may be buyer representations and warranties,

6 but they're pretty -- they're pretty small.

7 Q. And in connection with this

8 transaction, who is the -- the term there at the

9 top of page 15 as the seller and shareholder, who

10 is that in this agreement?

11 A. Well, the shareholder would be Rick

12 Sabath, to my recollection, and the seller would

13 be -- I'm not sure of the legal structure, but I

14 believe the seller is also Rick Sabath.

15 Q. And I want to look at some of that

16 language, Joe, that begins on the top of page 15.

17 A. Okay.

18 Q. Read it into the record and then ask

19 you some questions about it. Okay?

20 A. Okay.

21 Q. Under the heading that says,

22 "Representations and warranties of seller and

23 shareholder," it states:

24 "Seller and shareholder jointly and

25 severally make the following representations and

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1 JOSEPH MOLINO

2 BY MR. MUETHING:

3 Q. Mr. Molino, you began to describe what

4 this document was.

5 Could you say it again since beginning

6 our discussion of this document, please.

7 A. Sure.

8 It's the final agreement between the

9 buyer and the seller, between Hy-Tech, Inc. and

10 Atsco. And it, you know, contains the various

11 agreements -- all the agreements between the

12 parties, the understandings between the parties.

13 Q. We were discussing a little while ago,

14 before we went off the record, the concept of

15 representations and warranties.

16 A. Yeah.

17 Q. Are those representations and

18 warranties contained in this document?

19 A. Yes. I believe they're in Section 3.

20 Q. Is that at the bottom of page 14?

21 A. I'll confirm that as soon as I get

22 there.

23 Yes. Article 3, correct.

24 Q. And who here in the section you've

25 identified, Joe, is making the representations and

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1 JOSEPH MOLINO

2 warranties of purchaser, each of which shall be

3 deemed material and purchaser in executing,

4 delivering, and consummating this agreement has

5 relied upon the correctness and completeness of

6 each of such representations and warranties."

7 Did I read that correctly?

8 A. Yes.

9 Q. That is accurately what's contained in

10 PX-16?

11 A. Yes.

12 Q. "The concept of each of which shall be

13 schemed material," Joe, in your experience and in

14 connection with this transaction, what does that

15 mean?

16 MR. COLLINS: Objection.

17 A. It means the buyer is relying on these

18 representations and warranties as a critical

19 component regarding the decision to move forward

20 with the transaction.

21 Q. The same question about the language

22 at "has relied upon the correctness and

23 completeness," what does that mean to you in your

24 capacity as the CFO and COO of the purchasing

25 company?

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2 MR. COLLINS: Objection.

3 A. It means that it -- you know,

4 regardless of the level of due diligence, we're

5 relying on these representations to give us

6 comfort that the various things that we're

7 purchasing, whether they be receivables or

8 inventory or equipment, are what they purport to

9 be on the balance sheet.

10 Q. Joe, we talked about representations

11 and warranties kind of in a generic way a little

12 bit ago, and I asked you if they are typically

13 negotiated.

14 To your recollection, were the

15 representations and warranties in this document

16 subject to negotiation?

17 A. Yes. To my recollection, yes.

18 Q. What do you recall about that?

19 MR. COLLINS: Objection.

20 A. Well, I recall -- I recall that the --

21 you know, the document went back and forth a few

22 times, and typically, there are comments made by

23 each side and the sides get together and, you

24 know, come up with the final language of the

25 agreement.

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2 experience, is that the seller is representing

3 that the equipment that is in the business that's

4 being purchased -- it is purchased -- is of

5 sufficient quantity to conduct business as it's

6 been conducted historically, that it is in good,

7 working order, and that it's been properly

8 maintained and is sufficient -- is sufficiently --

9 of sufficient quality to continue to operate the

10 business as has been disclosed to the buyer.

11 Q. Was this an important representation

12 to the transaction, Joe?

13 A. Yes, and in a transaction where --

14 MR. COLLINS: I didn't hear that. I'm

15 sorry, there's echos.

16 MR. MUETHING: I'm sorry. I'm

17 fighting that feedback. I can't figure out

18 why.

19 MR. COLLINS: If you can repeat the

20 question or have the court reporter read it

21 back, I would appreciate that. Thank you.

22 MR. MUETHING: Of course.

23 Q. The question was: Was this an

24 important representation to you as a purchaser,

25 Joe?

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1 JOSEPH MOLINO

2 Q. Joe, through Article 3 here, there are

3 headings 3.1 down through 3.38.

4 Do you see that there?

5 A. Yes.

6 Q. What does that mean with respect to

7 the number of the representations that the seller

8 made here in connection with this transaction?

9 A. Well, they made 38 different types of

10 representations to us, to the buyer.

11 Q. One that I would like to ask you about

12 specifically is 3.17.

13 Could you turn to that, please?

14 A. Sure.

15 Okay. I'm there.

16 Q. And specifically, I would like to ask

17 you questions about 3.17(c).

18 Can you review that representation and

19 let me know when you're ready?

20 A. Sure.

21 Okay. I'm finished.

22 Q. Could you describe to the Court your

23 understanding of the representation at 3.17?

24 MR. COLLINS: Objection.

25 A. My understanding, based on my

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2 MR. COLLINS: Objection.

3 A. Yes. And in a situation where you're

4 acquiring a business that is reliant on equipment

5 to produce parts and, you know, that equipment

6 doesn't currently exist in the operation, that --

7 you know, the acquiring operation, it's absolutely

8 critical that it's in good working order so that

9 we can continue to produce those parts and sell

10 those parts and tools after the closing.

11 Q. I want to ask you about the -- you

12 mentioned that you're -- the company has been

13 inquisitive, and you mentioned your role in

14 setting strategy.

15 What was your sort of strategy -- or

16 what appealed to you about this potential

17 transaction to make you try to report about this?

18 A. We -- Hy-Tech Machine was and is in

19 the pneumatic tool business, which is producing

20 tools that are powered by compressed air. So we

21 have some knowledge of that industry and prior to

22 even the companies coming together, we knew of

23 Atsco. They had a certain niche in the market.

24 They were not in an area that we had a particular

25 presence.

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2 So between the concept of adding this

3 to our portfolio of tools, we -- we had some

4 comfort that we were somewhat familiar with their

5 operation, and that those two things usually are a

6 good recipe for doing an acquisition, an area that

7 you're familiar with but don't potentially have a

8 current product offering.

9 Q. Does the representation at 3.17 relate

10 to that corporate strategy in any way?

11 A. Could you -- I'm not sure I understand

12 the question. Could you maybe ask it in a

13 different way?

14 Q. Well, you mentioned, I believe, that

15 the -- there is a representation at 3.17 that you

16 will be able to purchase equipment and that it

17 will be in good working condition, correct?

18 A. Yes.

19 Q. And thinking about the strategy that

20 you just outlined, how does having good working

21 equipment help you facilitate that strategy?

22 A. Well, it would be difficult to be

23 successful after the closing without equipment

24 that was specifically purchased for the production

25 of the sorts of tools that were produced and sold

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2 of what was discovered by us during our due

3 diligence or shown to us during due diligence,

4 none of that has any bearing on the

5 representations and warranties that are made by

6 the seller in Section 3.

7 Q. Joe, thinking about your experience in

8 doing, you know, multiple transactions, can you

9 describe for the Court what a "working capital

10 adjustment" is?

11 MR. COLLINS: Objection.

12 A. Sure.

13 Businesses, especially businesses that

14 have inventory, are required to maintain a certain

15 level of working capital function, and what I mean

16 by that is there's receivables, inventory, and

17 payables, which is what is owed to vendors for

18 various parts and other items required to run the

19 business. So that investment, if you will, is a

20 requirement for a functioning company.

21 So that figure -- I'll call it the

22 "networking capital," which would be the accounts

23 receivable inventory minus payables -- can

24 fluctuate over time. So the concept behind a

25 working capital adjustment is that when we get to

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2 by -- by Atsco.

3 So it's critical to success after the

4 closing that we get that equipment because it was

5 specifically purchased for the business that's

6 there. Without it, not impossible, but very

7 difficult to run the business in the way that it

8 was run, and the purchase price was based on how

9 the business was run prior to the closing.

10 So to get full value, you want it to

11 be run as closely as possible to how it was run

12 before the closing.

13 Q. Joe, with document Exhibit PX-16 still

14 in front of you, could you turn to Section 11.7,

15 please.

16 A. Sure.

17 Okay. I'm there.

18 Q. And do you have a moment to review

19 the -- the Section 11.7?

20 A. Just give me one moment.

21 Okay.

22 Q. Can you provide the Court your

23 understanding of Section 11.7?

24 MR. COLLINS: Objection.

25 A. In general, it means that regardless

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2 a closing, which could be on, you know, any date,

3 there isn't any particular advantage or

4 disadvantage provided to the seller or the buyer

5 just by virtue of the fact what -- on the date

6 that the closing took place.

7 And, you know, by example -- for

8 example, if the day before the closing the seller

9 had a huge sale and sold, you know, half the

10 year's worth of -- of product, and the closing

11 took place the next day, while the seller would

12 have had all the expense of producing that product

13 and selling that product and shipping that

14 product, but given the typical transaction where

15 the buyer is acquiring the receivable, the seller

16 would take no part in the benefit of collecting

17 all of the cash that would come due as a result of

18 that sale.

19 So that is obviously inherently unfair

20 because if the sale had taken place, you know, a

21 few months earlier or not taken place, that would

22 have changed the level of working capital in the

23 business.

24 And in addition to that, if you do not

25 have a working capital adjustment, there is an

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2 incentive to the seller to benefit themselves in

3 the short run by leaving less working capital in

4 the business at the closing, and, obviously, you

5 wouldn't want to incentivize that.

6 So the concept is the buyer and seller

7 negotiate a -- what's called a "working capital

8 target," and usually, based on the average working

9 capital over some period of time, let's call it a

10 year, and at the closing, the working capital --

11 the actual working capital is compared to what the

12 target was.

13 If the actual working capital provided

14 is greater than the target, then the purchaser

15 will pay that extra amount to the seller. If the

16 working capital at the closing is less, then the

17 buyer would write a check -- excuse me -- the

18 seller would write a check to the buyer for the

19 difference.

20 That's a working capital adjustment.

21 Q. Thank you -- thank you for that.

22 Is there a working capital adjustment

23 built into the transaction with Atsco that we

24 looked at as PX-16?

25 A. Yes.

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2 Q. Have you seen this document before?

3 A. Yes.

4 Q. Can you describe it briefly for the

5 Court?

6 A. Yes.

7 It is the detailed calculation of the

8 working capital adjustment. On the left-hand

9 side, it begins with the balance sheet that was

10 provided at the closing.

11 Q. Just hold on for one second. Just --

12 let me ask you this, before you begin that

13 discussion: Is this a document that is kept as a

14 regularly -- in the course of P&F or Hy-Tech's

15 regular course of business?

16 A. No. It's only typically done -- or

17 it's only ever done as part of an acquisition.

18 Q. Sure. Thank you.

19 Is this a record of business activity

20 conducted at either P&F or Hy-Tech?

21 A. It is not a record of -- well, at P&F

22 or Hy-Tech?

23 No, it is not a record of activity at

24 P&F or Hy-Tech. Sorry.

25 Q. And I'm not trying to trick you.

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2 Q. And could you call attention to where

3 that's requested in the document?

4 A. Yes. I believe it's in Section 2.3.

5 Q. Okay.

6 A. Let me just get there.

7 So 2.3.2.2, and there's 2.3.3, I

8 guess -- 2.3.2.3.

9 Q. Thank you.

10 And, generally, is the working capital

11 adjustment, as you described in your testimony a

12 moment ago, is that the way the working capital

13 adjustment in this agreement were to function?

14 MR. COLLINS: Objection.

15 A. Yes.

16 Q. Mr. Molino, I've uploaded a document

17 in the chat function, a spreadsheet that begins

18 "Copy of Acquisition."

19 Do you see that there?

20 A. Give me a minute.

21 Yes.

22 Would you like me to open that?

23 Q. I would, please.

24 A. Okay.

25 Okay. I have it open.

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2 What I'm asking is: Is this a record

3 that was generated in the course of P&F or Hy-Tech

4 engaging in various business activities?

5 A. I'm not sure -- maybe you could ask

6 the question differently. I'm not sure I'm

7 understanding the question.

8 Q. Have you seen this document before?

9 A. Yes.

10 Q. Leaving aside this litigation, is this

11 document stored or maintained somewhere?

12 A. I'm sorry, say it again?

13 Q. Is this document stored or

14 maintained -- or where was it stored or

15 maintained? Where was it created or maintained?

16 A. It would be part of the closing

17 documents to the then transaction, the purchase.

18 Done after the fact, but it's part of

19 all the documents related to the full transaction.

20 Q. Okay. And, Joe, in the upper

21 left-hand corner of this document, it says: "P&F

22 Industries, Inc."

23 Do you see that there?

24 A. Yes.

25 Q. And just to belabor this point,

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2 because I need to for laying this evidentiary

3 record, why does it say, "P&F industries, Inc." in

4 the top left-hand corner?

5 A. Well, it's just to make it clear that

6 it's part of the documentation of our corporation,

7 our records -- our corporate records.

8 Q. That's what I was asking. I'm sorry

9 for belaboring this to the point of inartful

10 questions.

11 Let's move to a document that's

12 previously been -- sorry.

13 Let's just call this PX-32 for the

14 moment, and we may come back and change that

15 number. Sorry about that.

16 (Plaintiffs' Exhibit 32, spreadsheet,

17 previously marked for identification, shown

18 at this time.)

19 MR. COLLINS: Just note my objection.

20 MR. MUETHING: Yes, thank you.

21 Q. Okay. Sorry, for the detour, Joe.

22 Can you describe now what is reflected

23 on this document here?

24 A. Sure.

25 As I was saying earlier, down the

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2 into your chat there.

3 A. Okay.

4 Q. Have you seen this document before?

5 A. Yes, just give me a second to get it.

6 Yes, I have.

7 Q. Can you briefly describe what this

8 document is for a moment, and then we'll talk

9 about the details?

10 A. Sure.

11 At the closing date, it is often if

12 not impossible to know the exact inventory, which

13 is, again, as I mentioned earlier, part of the

14 working capital and part of the working capital

15 adjustment calculation.

16 So at some point, it could be before

17 the closing, could be weeks after the closing, an

18 actual physical inventory is taken, usually with

19 both sides, buyer and seller, present, and then

20 once that count is taken, what takes place is

21 what's called a "roll back."

22 So in this case, the inventory was

23 taken a few weeks after the closing, and then what

24 happens is you unwind or reverse any transaction

25 relating to inventory using the records for the

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2 left-hand side is what we call the closing balance

3 sheet as -- as presented, you know, by the seller,

4 and then there are various adjustments made to get

5 to the final balance sheet on the right-hand side.

6 A number of the entries don't have

7 anything to do with the -- the seller. They're

8 made as part of P&F's requirements and P&F being

9 public. Those would be columns 10 and 11.

10 But the rest of the columns, 1

11 through -- 1 through 8 and 9, relate to the final

12 adjustments to get the balance sheet to be in

13 conformance with generally accepted accounting

14 principles and be complete and accurate as of the

15 closing date.

16 Q. And does this document come to a

17 calculation with respect to a working capital

18 adjustment?

19 A. Yes. All the way at the -- on the

20 bottom -- the bottom right is the final working

21 capital adjustment, then the very bottom number

22 would be the -- the amount of money that was

23 calculated in this case for the seller to pay the

24 buyer.

25 Q. Joe, I've uploaded another document

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2 company back to the actual closing date. That's

3 producing the final inventory at the closing date.

4 The opposite could also be the case,

5 you could take inventory before the closing, and

6 then you'd have to roll it forward to the closing

7 date, kind of doing the opposite.

8 But in any event, this reduces the

9 final inventory as counted for the purposes of

10 calculating the working capital adjustment, and --

11 I'm sorry, go ahead.

12 MR. MUETHING: For the record, this is

13 something we've previously identified as

14 PX-27.

15 (Plaintiffs' Exhibit 27, spreadsheet,

16 previously marked for identification, shown

17 at this time.)

18 BY MR. MUETHING:

19 Q. Joe, is this a corporate record of P&F

20 Industries or Hy-Tech machine?

21 A. Yes.

22 MR. MUETHING: Plaintiffs seek

23 admission of PX-27.

24 I know Tim reserves his objections.

25 Q. Does this document relate to the other

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2 spreadsheet we were looking at a moment ago in

3 that regard?

4 A. Yes. In the -- you know, column X

5 cell, I believe it's 2247, it calculates the

6 difference between the balance sheet as presented

7 to us for -- excuse me -- the inventory on the

8 balance sheet presented to us and what they

9 actually calculated, and that difference, except

10 for a very small adjustment, the 19,637 is on

11 column -- is in column 6 of the acquisition

12 opening balance sheet workup schedule that we were

13 just looking at.

14 Q. Thank you.

15 MR. MUETHING: Let's go off the

16 record, take maybe 10 minutes or so, and

17 then I'm going to review my notes, then

18 we'll see what else we need to accomplish.

19 Thank you.

20 MR. COLLINS: Thank you.

21 VIDEOGRAPHER: This marks the end of

22 Media No. 1. We're going off the record at

23 11:59 a.m.

24 (Recess.)

25 VIDEOGRAPHER: This marks the start of

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2 A. I mean, there are other documents that

3 are part of the transaction, but that defines the

4 agreement and the terms.

5 Q. Okay. Prior to entering into the

6 asset purchase agreement, you described that

7 Hy-Tech did some due diligence. Is that right?

8 A. Yes.

9 Q. And you actually have a system for

10 doing their due diligence, don't you?

11 A. We have a typical set of documents we

12 require to be looked at and, you know, we perform

13 certain procedures around those, what we get.

14 Q. Right. And you actually have a due

15 diligence series of questions and activities that

16 you undertake that you document, correct?

17 A. Yes, we do that --

18 Q. Did you create that system?

19 A. Yeah -- yes, I created that system.

20 Q. Okay. And you followed that system

21 for purposes of the Air Tool transaction, correct?

22 A. Yes.

23 Q. We now have been provided in

24 discovery, and I have put in the chat function,

25 Exhibit 17 through 21.

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2 Media No. 2. We are back on the record at

3 12:11 p.m.

4 MR. MUETHING: Thank you.

5 Joe, I do not have anymore questions

6 for you at this time, and we will allow

7 Mr. Collins to take his turn now.

8 Thank you.

9 MR. COLLINS: Thank you.

10 EXAMINATION

11 BY MR. COLLINS:

12 Q. Mr. Molino, good morning -- it's

13 afternoon by now.

14 Allow me to follow up on some of the

15 things that we've been talking about so far today.

16 Plaintiff's Exhibit 16, I don't need

17 you to look at it, but let's just talk about it

18 for a second.

19 This is the document that defines the

20 transaction between Hy-Tech as buyer and Air Tool

21 as seller of Air Tool's assets. Is that correct?

22 A. The asset purchase agreement, yes.

23 Q. There's no other document that defines

24 that transaction other than the asset purchase

25 agreement, correct?

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2 (Plaintiffs' Exhibit 17, due diligence

3 binder, was marked for identification at

4 this time.)

5 (Plaintiffs' Exhibit 18, due diligence

6 binder, was marked for identification at

7 this time.)

8 (Plaintiffs' Exhibit 19, due diligence

9 binder, was marked for identification at

10 this time.)

11 (Plaintiffs' Exhibit 20, due diligence

12 binder, was marked for identification at

13 this time.)

14 (Plaintiffs' Exhibit 21, due diligence

15 binder, previously marked for

16 identification, shown at this time.)

17 BY MR. COLLINS:

18 Q. If you need a moment to download and

19 look at those, but I would -- I'm going to ask you

20 if those binders are the papers that reflect

21 Hy-Tech's due diligence system. That would be

22 Exhibits 17 through 21 -- Plaintiffs' Exhibit 17

23 through 21.

24 A. It will take me a minute to get them

25 all saved.

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2 Q. Yeah, it will take you more than that.

3 A. Okay.

4 Q. Take your time.

5 A. Sure.

6 So do you want me to address them one

7 at a time, or do you want me to get them all

8 uploaded first?

9 Q. Well, upload them, and then look

10 through them, and then I'm going to ask you that

11 sort of global question: Do those exhibits, 17

12 through 21, reflect the system that Hy-Tech used

13 in doing its due diligence with this transaction?

14 A. I'm having a little trouble opening

15 the first exhibit.

16 Q. They're long, so take your time.

17 A. All right.

18 No, that didn't work.

19 MR. MUETHING: I think, since it will

20 only take a minute to get back on the

21 record, maybe we should go off the record

22 while he does this, and then we can get

23 started again?

24 They are very long.

25 THE WITNESS: Yeah, my computer is not

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2 I'm just saying for the record -- they encompass

3 page numbers that are Bates labeled HY0176 through

4 HY2034, and they're all consecutive pages that are

5 broken into binders, and, again, they're labeled

6 "due diligence binders."

7 So if you were to look at the -- the

8 documents in Exhibit 18, 19, and 21, do those

9 appear to be the due diligence binders that

10 Hy-Tech created for purposes of the Air

11 Tool/Hy-Tech transaction?

12 A. Seventeen is not.

13 Let me look at 18.

14 Q. What is 17?

15 A. Seventeen looks like an attachment to

16 the asset purchase agreement.

17 Every asset purchase agreement at the

18 closing will have certain schedules that are

19 referenced in the document that are attached to

20 the document and become part of the formal asset

21 purchase agreement.

22 That is what looks like item 17 is.

23 Q. Okay. Hang on one second then,

24 please.

25 A. Oh, wait, I apologize. It looks like

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2 recognizing this format. I don't know what

3 it is. They're not PDFs.

4 MR. COLLINS: Well, they are PDFs,

5 actually.

6 MR. MUETHING: Sorry. Wait for a

7 second, please.

8 Let's go off the record.

9 Tim, is that okay?

10 MR. COLLINS: Yeah, sure.

11 MR. MUETHING: Okay.

12 VIDEOGRAPHER: We are going off the

13 record at 12:15 p.m.

14 (Recess.)

15 VIDEOGRAPHER: We're back on the

16 record at 12:26 p.m.

17 BY MR. COLLINS:

18 Q. Mr. Molino, you have now downloaded

19 Plaintiffs' Exhibit 17, 18, 19, and 21. Is that

20 correct?

21 A. Yes.

22 Q. All right. And let me tell you, based

23 on the exhibit list from your lawyer that was

24 filed in court, that Exhibit 17 through 21 were

25 listed as due diligence binders. And they -- and

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2 it might be a couple of things combined here.

3 Just give me one second, if you

4 wouldn't mind?

5 MR. MUETHING: Joe, what I would

6 suggest is take a moment and look through

7 the document and then --

8 THE WITNESS: Yeah.

9 MR. MUETHING: -- Mr. Collins can ask

10 you your question again, and then you can

11 answer.

12 THE WITNESS: Yeah. If you wouldn't

13 mind giving me a minute to just make sure I

14 understand what is here. I thought it was

15 one thing, but it looks like something else.

16 BY MR. COLLINS:

17 Q. Yes, please, take a moment and look at

18 them one at a time -- look at 17, and then we'll

19 come back and talk about it.

20 A. Okay. Item 17 is due diligence. For

21 some reason I was looking at a different schedule

22 and I don't know why. But 17 is due diligence.

23 Q. And the face page of 17 says, "Tab

24 1A." Now, this appears that there are a number of

25 tabs included in the due diligence binders that

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2 were created by Hy-Tech before it did the

3 transaction. Is that right?

4 A. Yes, yes.

5 Q. And turning to the second page, which

6 has got a -- in the lower right-hand corner, a

7 "Bates number," as we call it, HY0176.

8 Do you see that?

9 A. Yes.

10 Q. There's handwriting on the top of the

11 page.

12 Is that yours?

13 A. Yes, it looks like it.

14 Q. And it's got a 7/1/14 date referenced.

15 Is that when you read it?

16 A. I assume that's when I read it, yes.

17 Q. Okay. Would there be any other reason

18 here to date that page other than that was the day

19 you read it?

20 A. I can't think of any other reason.

21 Q. Okay. And that's six weeks before

22 this transaction closed, correct?

23 A. Yeah, it looks that way.

24 Q. And so there's been six weeks of

25 reading and thinking about all of the compiled

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2 Q. Okay. And then in the third

3 paragraph, the first sentence, there were

4 considered factors you considered during your

5 negotiations that there was equipment valued at

6 over 1 million that will likely not all be

7 required to be moved to our facility and will be

8 sold.

9 That was the thought process of

10 Hy-Tech in this transaction. Is that right?

11 MR. MUETHING: Objection.

12 MR. COLLINS: Grounds?

13 MR. MUETHING: Well, you asked the --

14 the eventual question was the thought

15 process of the corporation, and I'm not sure

16 this witness is here to testify to that

17 and --

18 MR. COLLINS: Brian, thank you. Got

19 it. Thank you.

20 Q. Sir, your answer?

21 A. I'm sorry. Could you repeat the

22 question?

23 MR. COLLINS: Could the court reporter

24 read back the question, please.

25 (Record read.)

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2 information that's in these binders that your

3 lawyer has labeled as "due diligence binders." Is

4 that correct?

5 A. Yes.

6 MR. MUETHING: Objection.

7 You can answer.

8 Q. The answer was "yes"?

9 A. Yes.

10 Q. Okay. Thank you.

11 Who wrote this executive summary of

12 the potential acquisition of Atsco?

13 A. I believe that I did.

14 Q. And in this executive summary, you've

15 got a description that there will be -- in the

16 second paragraph -- the savings of \$700,000

17 generated by the eventual movement of the entire

18 operation of our Hy-Tech manufacturing facility in

19 Pittsburgh. We expect the transition period to be

20 about six to nine months. Is that right?

21 A. Yes, that's what it says.

22 Q. Okay. And that accurately expressed

23 your intention with regard to the Atsco

24 transaction. Is that true?

25 A. At the time, yes.

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2 Q. Is that your thinking process, sir, in

3 doing this transaction?

4 A. Based on what's here, that was a

5 factor in the decision, yes.

6 Q. Okay. The next page I'd like you to

7 look at is Bates numbered HY0177. At the top of

8 the page, you wrote:

9 "In fact, Hy-Tech has tried for many

10 years to provide these tools to TorcUP, and TorcUP

11 has indicated their satisfaction with their

12 current supplier, Atsco."

13 Is that your understanding --

14 A. I'm sorry. Could you say the page

15 number again? I can't seem to find the section

16 you're referring to.

17 Q. Yes. Right at the top of the page of

18 HY0177.

19 A. Oh, okay. Okay. Got it.

20 I say it now, yes.

21 Q. It's the first full sentence, I think.

22 Yeah, it's the first full sentence:

23 "In fact, Hy-Tech has tried for many

24 years to provide these tools to TorcUP, and TorcUP

25 has consistently indicated their satisfaction with

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2 their current supplier, Atsco."

3 Do you see those words?

4 A. I do.

5 Q. And that was your understanding going

6 into this transaction for the purchase of Atsco

7 assets, correct?

8 A. Yes.

9 Q. Did you do any due diligence to

10 ascertain whether any of Atsco's customers,

11 including TorcUP, bought and produced these

12 materials?

13 A. I don't remember. I will say

14 generally it is difficult to speak to customers.

15 As you can imagine, a seller is reluctant for that

16 conversation to take place.

17 Q. Did you know that Mr. Ober spoke with

18 the people at TorcUP?

19 A. That is -- that is definitely

20 possible.

21 Q. And did you know that Mr. Ober

22 recognized that he was not able to break in to

23 become a supplier to TorcUP?

24 A. I do remember that.

25 Q. And that Atsco consistently was the

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2 which will be related to it.

3 If you turn to the page we have -- or

4 your lawyers have labeled as HY0265.

5 A. 265?

6 Wait a minute. Getting there.

7 Okay.

8 Q. The fifth sentence in the middle of

9 the paragraph, let me read it to you.

10 "Hy-Tech has tried for a number of

11 years to provide these tools to TorcUP, and TorcUP

12 has consistently indicated their satisfaction with

13 their current supplier, Atsco. Despite not being

14 able to become a vendor to TorcUP, Bob Ober,

15 president of Hy-Tech, has a good relationship with

16 TorcUP."

17 Did I read that correctly?

18 A. Yes.

19 Q. And prior to the transaction of

20 Hy-Tech acquiring Air Tool, that was your

21 understanding. Is that correct?

22 A. Yes, to the best of my recollection.

23 Q. Well, you looked at the due diligence

24 binders, so you would have been writing these

25 words back in 2014. Is that right?

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2 supplier to Atsco, not Hy-Tech -- I'm sorry -- did

3 I say that right?

4 That Atsco was consistently the

5 supplier to TorcUP, and not Hy-Tech?

6 MR. MUETHING: Objection.

7 Q. Do you understand that, Joe?

8 A. Yeah.

9 THE WITNESS: I'm sorry. Am I allowed

10 to answer, Brian?

11 MR. MUETHING: Yes. Joe, I should

12 have done a better job of saying that.

13 My objections are going to be for the

14 record, and unless I specifically instruct

15 you not to answer, which will be unlikely,

16 after the objection is interposed, and

17 pending any response from Mr. Collins, you

18 can feel free to answer the question, as you

19 are here.

20 THE WITNESS: Okay.

21 A. I'm sorry. Could you repeat that

22 question again?

23 Sorry about that.

24 Q. Well, I think you gave us the answer,

25 so I'm going to move on to the next question,

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2 A. Just because I was in charge of the

3 due diligence binders, that doesn't mean I wrote

4 everything in here. We have a whole team that

5 does due diligence.

6 Q. Okay. Well, that's an interesting

7 question.

8 Who's on your -- who was on your due

9 diligence team, again, in 2014 for this

10 transaction?

11 A. It would -- most likely would have

12 included Bob Ober, the CFO, controller, perhaps

13 somebody here, and myself, and along with any

14 experts we -- we would have required.

15 Q. Would the CFO have been Mr. Aloï?

16 A. At the time, no. The CFO would have

17 been a woman named Betty Smail.

18 Q. Okay. So we've got Bob Ober. We've

19 got Betty Smail. We heard testimony yesterday

20 that Mr. Aloï was involved with helping with the

21 due diligence.

22 Do you know if Mr. Horowitz was

23 involved with the -- any of the work prior to this

24 transaction taking place?

25 A. No, he was not involved in due

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2 diligence.

3 Q. Was he involved with any of the work

4 prior to this transaction taking place?

5 A. What do you mean by "the work"?

6 Q. Whatever it took to cause Hy-Tech to

7 decide to make this purchase -- deciding to make

8 this purchase by Hy-Tech?

9 A. Mr. Horowitz was not directly

10 involved. He did meet with Mr. Sabath on several

11 occasions before the -- before the closing. But

12 he was not involved in due diligence.

13 Q. Was there any other business that Mr.

14 Horowitz had with Mr. Sabath, other than the

15 potential sale of the Air Tool assets to --

16 A. Not to my knowledge.

17 Q. All right.

18 Were there any other in-house

19 personnel at Hy-Tech that were involved with this

20 transaction in terms of due diligence?

21 A. Patrick Curry would have been

22 involved.

23 Q. Okay. Anyone else?

24 A. Most likely not, but I -- I would

25 say -- I would say no.

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2 Q. All right. How many insurance

3 professionals would have been helping you with due

4 diligence on this transaction?

5 A. I would -- based on my recollection,

6 at most, one. We would have probably passed the

7 insurance information in front of our broker, and

8 they would have probably reviewed it for us.

9 Q. And how many accountants from the

10 CohnReznick firm were involved with doing due

11 diligence?

12 A. My recollection is it was a staff and

13 a manager with some involvement of a partner.

14 That's my recollection.

15 Q. So that would be three.

16 And then how many lawyers from the

17 Silverman law firm were involved with this

18 transaction?

19 A. I don't remember.

20 Q. More than one?

21 A. Most likely -- it wouldn't be more

22 than a couple. Typically, it's a partner and a

23 staff.

24 Q. Do you know of any lack of cooperation

25 by Air Tool with any of the due diligence that

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2 Q. Well, by my math, there's Bob Ober,

3 Betty Smail, Patrick Curry, Mr. Aloï said he was

4 involved, and yourself. So that would be five?

5 A. Yes.

6 Q. And then you had some outside

7 assistance as well, didn't you?

8 A. We typically would have insurance

9 experts look at the insurance information.

10 I don't recall if there was any

11 environmental issues here. I'd have to look at

12 the binders, but often we have an environmental

13 expert take a look at the facility and grounds.

14 In this transaction, I'd say that's

15 about it. I don't think we had anybody else.

16 Q. And was CohnReznick, the accounting

17 firm, involved?

18 A. Yes. That wasn't always the case, but

19 in this transaction, I asked CohnReznick to

20 perform some limited procedures on the financial

21 statement.

22 Q. Okay. And was the law firm of

23 Silverman Acampora involved?

24 A. Yeah. They were the -- the law firm

25 that helped us with all the documentation.

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2 Hy-Tech or any of the outside professionals were

3 doing on your behalf, do you know of any

4 uncooperativeness by Air Tool to any of those

5 information requests?

6 A. My recollection is we were given a

7 very short time frame in which to perform the due

8 diligence. I do recall being given several hard

9 deadlines by Rick Sabath. I do remember having

10 very limited access to the facility.

11 If you want to call that being

12 uncooperative, I suppose you could. I would say

13 that with respect to the amount of access and

14 timeline, this transaction was probably the

15 most -- I would say the sellers were the most --

16 probably one of the most uncooperative situations

17 we've ever encountered.

18 Q. In pre -- presales and diligence?

19 A. Yes.

20 Q. And at that juncture, they weren't

21 cooperating, you could have just said, no, thank

22 you, and walked away, correct?

23 A. Absolutely, yes.

24 Q. And you didn't. So you apparently got

25 what you needed to proceed the transaction

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2 closing, correct?

3 A. Yes.

4 Q. Do you have any information that was

5 given to you that Air Tool knew was false as of

6 August 13, 2014?

7 Let me just be clear: You have

8 certainly filed a lawsuit saying that there were

9 things you thought breached reps and warranties,

10 and you've described them.

11 What -- tell us what Air Tool knew was

12 false on August 13, 2014.

13 MR. MUETHING: Objection.

14 Go ahead. Form and compound.

15 You can answer, Joe.

16 A. What did -- let me just rephrase --

17 make sure I understand the question.

18 Can you ask it one more time?

19 Q. Yeah, sure.

20 You've certainly filed a lawsuit and

21 testified here today of what your company views to

22 be breaches of representations and warranties,

23 true?

24 A. Yes.

25 Q. Okay. And so you're suggesting in

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2 Q. If you asked for a description of a

3 particular -- how many -- how many items from a

4 particular part number, did you get it?

5 A. Yes.

6 Q. Okay.

7 A. With respect to quantity, yes.

8 Q. And so it's your belief from your

9 assessment that there was information that was

10 untrue, and I'm -- and -- but I'm trying to

11 understand what -- what -- did somebody from Air

12 Tool tell you that there was false information

13 given to you?

14 MR. MUETHING: Objection to form.

15 A. Yeah, could you ask that question

16 again?

17 Q. Sure.

18 Did you talk to Rick Sabath, Mike

19 Sevilla, or any of the other individuals who were

20 associated with Air Tool and did they tell you we

21 gave you false information prior to August 13,

22 2014?

23 A. I don't recall anyone from Air Tool

24 Service Company telling me they gave me false

25 information.

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2 that that you were given information that wasn't

3 true, correct?

4 A. Correct.

5 MR. MUETHING: Objection.

6 Q. And what can you tell me about what

7 Air Tool knew on August 13, 2014 that it was

8 supplying to you was untrue?

9 Not your allegations, but what did --

10 tell me what you know about what Air Tool knew?

11 MR. MUETHING: Objection.

12 A. I'm not sure I could know what Air

13 Tool knew.

14 Q. I'm not surprised at that answer, and

15 thank you. That's really what I wanted to hear.

16 Your due diligence -- you made

17 repeated requests for materials from Air Tool.

18 Isn't that right?

19 A. Yes.

20 Q. And was anything withheld from you or

21 not supplied to you?

22 A. Well, what was withheld from us was

23 information regarding the non-saleability of

24 certain inventory and the damage to certain

25 inventory. That was withheld from us.

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2 Q. Okay. Do you know if Air Tool changed

3 its -- the way it conducted its business from the

4 time that it signed a letter of intent with you

5 until August 13, 2014?

6 A. I do recall that they had a -- they

7 were having a difficult time producing product in

8 the several months before the closing.

9 Q. Is that in your due diligence binders

10 somewhere?

11 A. I don't recall.

12 Q. And was that a change in their doing

13 business?

14 A. I suppose it depends on your

15 perspective.

16 Q. Were they selling different products

17 to different people?

18 A. Not to my recollection.

19 Q. Did they -- were they outsourcing

20 their manufacturing to somebody else to produce

21 the parts for their customers?

22 A. I don't remember.

23 Q. Was Air Tool the subject of an annual

24 audit by its accountants?

25 A. I believe that it was.

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2 Q. Is there anything that you found in

3 the audited financial statements of Air Tool for

4 the periods up through the closing date of this

5 transaction that's untrue?

6 A. Not that I recall.

7 Q. Would have an audit looked at Air

8 Tool's method of doing inventory and accounting

9 and so forth of the materials it had on hand?

10 A. I'm sorry, is that a question?

11 Q. It is.

12 A. Can you say it again?

13 Q. Would an audit of Air Tools business

14 have included a review of Air Tool's inventory

15 handling and counting?

16 A. I'm sorry. You broke up -- you broke

17 up a little bit. I apologize. One more time?

18 Q. Sure.

19 In the course of an audit, would Air

20 Tool's inventory handling and counting have been

21 subject to the review of the audit firm?

22 MR. MUETHING: Objection, form,

23 foundation.

24 A. I believe that it would.

25 Q. And did you see anything in the

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2 took over the business, was the inventory count of

3 Air Tool's inventory done in a manner consistent

4 with Air Tool's audited financial statements.

5 A. I'm sorry, could you ask that question

6 again?

7 Q. Certainly.

8 When Hy-Tech took over the assets of

9 Air Tool and did an inventory count, was the

10 Hy-Tech inventory count of Air Tool's inventory

11 done in a manner consistent with Air Tool's

12 audited financial statements?

13 MR. MUETHING: Objection.

14 A. Yeah, I don't know. I can only

15 speculate as to how inventory was taken when we

16 didn't own the company.

17 I do know that good accountants

18 typically use very similar procedures in taking

19 inventory, so all I can suggest is that the way

20 that we took inventory is fairly common among

21 accountants, in my experience in accounting and

22 finance for 30 years.

23 Q. So you can't tell the Court

24 definitively that Hy-Tech's inventory was done in

25 a manner consistent with Air Tool's audited

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2 audited financial statements that you received

3 prior to the closing of this transaction that told

4 you there was something amiss with Air Tool's

5 inventory handling and counting?

6 MR. MUETHING: Objection, form.

7 A. Not that I remember.

8 Q. I'm going to ask you to go back to

9 Plaintiffs' Exhibit Number 16, if you would.

10 A. Is that the asset purchase agreement?

11 Q. Yes. That's what I was just going to

12 say, it's the asset purchase agreement.

13 A. Okay. Got it.

14 Q. Okay. Let's look at Section 2.3.2.1,

15 the inventory section.

16 A. Okay.

17 Q. When Hy-Tech came into the business

18 after the transaction, would that have been

19 August 14, 2014?

20 A. Yes.

21 Q. Okay. Did -- did Air Tool have an

22 inventory system in place before Hy-Tech purchased

23 Air Tool?

24 A. To my recollection, yes.

25 Q. Okay. And when Hy-Tech stepped in and

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2 financial statements, can you?

3 A. I can only say that if the inventory

4 was taken properly and audited by an outside

5 accounting firm that, what we did would have been

6 most likely quite similar.

7 Q. Right. But in terms of my question --

8 I appreciate what you're saying, sir, but in terms

9 of my question, your answer is no, you don't know

10 if Hy-Tech's inventory count of Air Tool's

11 inventory was done in a manner consistent with Air

12 Tool's audited financial statements. Is that

13 correct?

14 A. No, I wouldn't know.

15 Q. Thank you.

16 Do you know if the Air Tool production

17 processes continued to run after July 1, 2014

18 until Hy-Tech took the business over?

19 A. Yes, they were -- they were in

20 operation.

21 Q. And do you know if the product that

22 was produced during that -- they use the phrase

23 "GAAP period." I'm referring to the July 1, 2014

24 until the end of business August 13, 2014, do you

25 know if that was -- those products were

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2 incorporated into Air Tool's inventory?

3 A. I wouldn't know the answer to that.

4 Q. Do you know how parts were being

5 processed, new finished goods were being produced,

6 or new work-in-progress was being produced in

7 inventory at Air Tool during that July 1 through

8 August 13 close of business 2014 period?

9 A. No, I won't --

10 MR. MUETHING: Objection.

11 A. Yeah, I wouldn't know that either.

12 Q. After August 14, 2014, when Hy-Tech

13 took over the Air Tool assets, until January 30,

14 2014, we heard that the MacTurn -- the Okuma

15 MacTurn piece of equipment was at the facility in

16 Mentor, Ohio, that Air Tool formerly operated.

17 Did you know that?

18 A. Could you repeat those dates again,

19 please?

20 Q. Yeah, sure.

21 So my understanding is this

22 transaction closed on August 14, 2014.

23 We're in agreement on that?

24 A. Yeah.

25 Q. We were told yesterday that the

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2 Q. Do you know if those individuals did

3 the physical count, which is defined here as

4 "Inventory Count"?

5 A. I was not on location that day. My

6 recollection is those three people were there.

7 They -- they stayed on with the company after the

8 closing. I do know that our team was also there

9 working on the inventory.

10 Q. Did that take place within 20 days of

11 August 14, 2014?

12 A. My recollection is it took place 21

13 days after that date.

14 Q. Okay. And then was there rollback of

15 the inventory count that took place within 20 days

16 of August 14, 2014?

17 A. It took place after that.

18 Q. And was there some kind of an

19 inventory acknowledgement that was sent within 20

20 days of the closing date by Hy-Tech to Air Tool?

21 A. My recollection is it was sent after

22 that.

23 Q. It was sent on August -- or -- I'm

24 sorry -- October 16, 2014. Isn't that correct?

25 A. I don't have the document in front of

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2 MacTurn -- the Okuma MacTurn at the Mentor

3 facility was taken by a rigging company on

4 January 18, 2015.

5 Did you know that -- January 30, 2015.

6 A. That sounds about right.

7 Q. Okay. Was the Okuma MacTurn operating

8 during that period, August 14 through January 30?

9 A. I don't remember.

10 Q. It would have been under the control

11 of Hy-Tech during that period of time, wouldn't

12 it?

13 A. Yes.

14 Q. Okay. Let's look at Exhibit 16,

15 Section 2.3.2.1.

16 A. Okay.

17 Q. There's a defined term, "Inventory

18 Count."

19 Do you see that?

20 A. Yes.

21 Q. And it indicates that the inventory

22 count was to be taken by Mike Sevilla, Nicholas

23 Russell, and Michael Turick.

24 Do you see that?

25 A. Yes.

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2 me that you're referring to, but -- so I'm not

3 sure I can answer that question.

4 Q. Okay. Well, we'll get to the

5 document.

6 But I do have a document that's dated

7 October 16, 2014 to Rick Sabath from you, and it

8 purports to be the inventory acknowledgement

9 pursuant to Section 2.3.2.1 of the asset purchase

10 agreement. Okay?

11 So you don't have -- you'll see it,

12 but you don't have a disagreement that October 16,

13 2014 was when you actually sent an inventory

14 acknowledgment form. Is that right?

15 A. I'd have to look at the document to

16 confirm that, but that sounds about right.

17 Q. And that was considerably more than 20

18 days after August 14, 2014. Is that right?

19 A. Yep.

20 Q. Did Hy-Tech know what Air Tool's

21 inventory practices were prior to the closing of

22 this transaction?

23 A. I don't know the answer to that

24 question.

25 Q. Do you know if Air Tool had a

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2 computerized system by which it took care of this

3 inventory requirement?

4 A. Yes, my recollection is it had a

5 computerized system, yes.

6 Q. Did Hy-Tech use that system for any

7 purpose?

8 A. When?

9 Q. After the transaction closed?

10 A. Yeah, I'm fairly certain we would have

11 continued to use whatever system was there for

12 some period of time.

13 Q. Were you -- was that personal

14 knowledge you have or you're assuming that to be

15 the case?

16 A. It's my recollection of my knowledge.

17 Q. Okay. Who would have been the person

18 directly responsible for operating the Mentor

19 facility of Air Tool after the transaction closed?

20 A. I don't remember the team that was

21 left in place. My recollection, it would have

22 been the team that was there when we bought the

23 company.

24 Q. Was that Mr. Ober?

25 A. Mr. Ober would have been the president

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2 the transaction closed?

3 A. Again, as I said earlier, there's only

4 so many ways to take an inventory.

5 So if it was an -- it was an audited

6 statement. These statements were audited by a

7 public accounting firm. The practices that would

8 have taken place would have been quite similar to

9 the standard practices any team of accountants

10 would perform on inventory.

11 Q. So I appreciate your answer, but I

12 need a specific response to my question, which is

13 do -- did Hy-Tech know what the past practices of

14 Air Tool were with regard to inventory?

15 A. I can't say for certain.

16 Q. So is your answer, no, Hy-Tech did not

17 know what the past practices were of Air Tool with

18 regard to inventory?

19 A. Other than what we would have learned

20 in due diligence, no.

21 Q. Quite candidly, sir, the judge is

22 going to want a very direct answer from you.

23 Did Hy-Tech know what the past

24 practices were of Air Tool with regard to

25 inventory?

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2 of the parent company, but I -- I don't remember

3 if he was running day-to-day operations at Atsco

4 immediately after the closing.

5 Q. Do you know if he ever came to Atsco

6 and made announcements to the staff?

7 A. I'd say that's likely.

8 Q. Do you know if he told the staff

9 immediately after the closing of the transaction

10 that the facility was going to be closed?

11 A. I don't remember if he said that.

12 Q. Do you know if he told personnel at

13 Air Tool that the inventory system that Air Tool

14 had been using would no longer be utilized after

15 the close of the transaction?

16 A. No, I don't remember that.

17 Q. In the Exhibit 16, 2.3.2.1, the

18 inventory count was to be done -- if you'll find

19 this phrase with me, it's in this first

20 sentence -- in accordance with the past practices

21 of seller as of the date of such inventory count.

22 Do you see that?

23 A. Yes.

24 Q. Okay. Did Hy-Tech know what the

25 inventory past practices of Air Tool were after

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2 MR. MUETHING: Objection.

3 A. I don't know -- I don't know the

4 answer to that question.

5 Q. That's a fair response, and I

6 appreciate that.

7 If you go to the next section in

8 Exhibit 16, which is 2.3.2.2, regarding the

9 closing statement, and this is towards the lower

10 middle of that paragraph, and see if you can find

11 it and follow with me and see if I read this

12 correctly:

13 "The closing statement shall be

14 prepared in accordance with GAAP applied

15 consistently with seller's past practices,

16 including giving effect to reasonable allowances

17 for bad debt, inventory shrinkage, and

18 obsolescence, and reasonable reserves for customer

19 returns, allowances, and rebates."

20 Do you see that line?

21 A. Yes.

22 Q. And did I read it correctly?

23 A. Yes.

24 Q. Okay. And to the degree that you

25 recall the closing statement that you sent in

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1 JOSEPH MOLINO

2 October, did it take into account seller's past

3 practices?

4 A. Could you say that -- I'm sorry --

5 could you ask that question again?

6 Q. Right.

7 To the degree you recall sending a --

8 a closing networking capital statement to --

9 (Discussion off the record.)

10 Q. Let me start again, and we'll strike

11 that question.

12 To the degree you recall sending a

13 closing statement to Air Tool, did that closing

14 statement take into account and what were

15 consistently with seller's past practices?

16 A. I don't know.

17 Q. Thank you.

18 And do you know if your closing

19 statement included giving effect to reasonable

20 allowances for bad debt?

21 A. Yes, to my recollection, it did.

22 Q. And was that allowance of bad debt

23 consistent with seller's past practices in that

24 regard?

25 A. To the best of my knowledge, yes.

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2 obsolescence and the fact that there wasn't any.

3 Q. How did you apply seller's

4 obsolescence policy to your closing statement?

5 A. As I said, I don't know.

6 Q. You said you don't know.

7 Is that still true?

8 A. Seller's obsolescence policy, we sent

9 the -- in the due diligence, we indicated that

10 they didn't have an obsolescence policy, so how

11 can I apply it?

12 Q. Well, they didn't have a written one.

13 Do you know if they had an

14 obsolescence policy that never found its way into

15 a writing?

16 A. I don't know. I don't recall that.

17 MR. MUETHING: Hey, Tim, when you get

18 to a spot that makes some sense, can we take

19 like a five-minute break, please?

20 MR. COLLINS: Yes, sir. Now's good.

21 MR. MUETHING: Now's good?

22 MR. COLLINS: Yes.

23 MR. MUETHING: I don't want to

24 interrupt. Thank you.

25 MR. COLLINS: No, we just finished

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2 Q. Okay. Same question: When you sent

3 that closing statement, did you take into account

4 seller's past practices insofar as you were

5 describing inventory shrinkage and obsolescence?

6 A. I don't know the answer to that.

7 Q. I believe in your due diligence

8 binders, there are references that you make both

9 in typed and in handwritten form that say Air Tool

10 doesn't have an obsolescence policy for inventory.

11 Do you recall that?

12 A. It sounds like something I would --

13 would say. It sounds correct. That's -- what you

14 said sounds reasonable.

15 Q. And so would you have known -- you

16 really didn't have a written policy, so how did

17 you take into account seller's obsolescence policy

18 into your closing statement?

19 A. We relied on their representations.

20 Q. Which representations?

21 A. In the asset purchase agreement.

22 Q. Okay. Was there representations about

23 their obsolescence policy in the asset purchase

24 agreement?

25 A. There were representations about the

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2 that section.

3 MR. MUETHING: Okay. Perfect. Thank

4 you.

5 Let's take a five-minute break.

6 Off the record, please.

7 VIDEOGRAPHER: We're going off the

8 record at 1:11 p.m.

9 (Recess.)

10 VIDEOGRAPHER: This marks the start of

11 Media No. 3. We're back on the record at

12 1:19 p.m.

13 BY MR. COLLINS:

14 Q. Thank you, Mr. Molino.

15 Let me ask a couple of questions here.

16 You -- Hy-Tech is a -- well, I guess

17 P&F is a publicly traded company. Isn't that

18 correct?

19 A. Yes.

20 Q. What exchange are you traded on?

21 A. NASDAQ.

22 Q. And going into the acquisition that

23 you made of the Air Tool assets, did P&F borrow

24 from any financing sources in order to do the

25 transaction?

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2 A. I would -- yes, I'm certain that we

3 borrowed the money from our -- our bank.

4 Q. Okay. And it has been described

5 yesterday as being an asset-based loan.

6 Does that seem to be a correct

7 description of the transaction as far as you

8 recall?

9 A. Well, if I could just clarify, the

10 transaction was an asset-based structure. Our

11 arrangement with our bank is an asset-based

12 facility. Those are two separate things.

13 Q. Okay. I was quoting the language that

14 some of your company witnesses used over the last

15 couple of days, so I appreciate that

16 clarification.

17 In the context of an asset-based

18 facility, isn't it true that the secured lender

19 comes in and performs an audit as to the assets

20 that are going to serve as the basis for the loan

21 that you're taking out?

22 A. Not usually at the time of the

23 closing. It's possible, and to be honest, I don't

24 remember if that took place.

25 What was more likely would have taken

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2 going down the list of anything valuable that's

3 serving as the basis of their collateral, yes?

4 A. It's based on the collateral that

5 we've agreed that's used in the -- our facility.

6 For example, it was just in accounts receivable

7 and inventory, it wouldn't have included

8 equipment.

9 Q. Okay. But they would have been taking

10 a hard look at that inventory to see what it was,

11 its quality, those kinds of things in their audit.

12 Is that correct?

13 A. At some point in time, yes.

14 Q. Okay. And in addition to the lender's

15 asset-based loan on it, would there also have been

16 an audit performed by your auditor, CohnReznick,

17 of the assets that you were acquiring?

18 A. Not typically. The transaction would

19 have been too small for that.

20 Q. So are you suggesting that there was

21 no such audit or that you just don't recall one?

22 A. I don't recall an audit, and finally,

23 I'm fairly confident there was no audit

24 specifically of the target company.

25 Q. Now, to get to the net working capital

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2 place is some months after the closing, they would

3 have done an audit of assets.

4 Q. So a bank would lend money in an

5 asset-based loan situation and they wouldn't

6 verify what the assets were before they lent out

7 that money? Is that what you're suggesting?

8 MR. MUETHING: Objection.

9 A. It is possible that -- and I don't

10 remember exactly, but it's possible that we had

11 sufficient collateral available to us without the

12 assets of the target company sufficient to make

13 the acquisition.

14 Q. Okay. And so when an asset-based

15 lender does an audit, that's a field audit.

16 Someone actually shows up in the premises where

17 the assets are that serve as the collateral for

18 their loan. Is that correct?

19 MR. MUETHING: Objection, form,

20 foundation.

21 Q. Is that correct, sir?

22 A. Yes.

23 Q. Okay. And an asset-based loan field

24 audit, the auditors are checking inventory.

25 They're looking at accounts receivable. They're

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2 adjustment that you described in the examination

3 that Mr. Muething had with you, you made a

4 deduction -- let me find exactly where -- for an

5 obsolescence reserve of \$126,152.60.

6 Do you recall that?

7 That would be Plaintiff's Exhibit 27,

8 if you need to go back to it.

9 A. Yep, that's what I see here, yep.

10 Q. And so that obsolescence reserve, was

11 that a policy -- an outspoken policy of Hy-Tech?

12 A. Hy-Tech required that, per GAAP, that

13 any inventory that is not valued -- that is not

14 worth what its value is on the books must be

15 reserved against. That's generally accepted

16 accounting principles.

17 Q. You said that that's a Hy-Tech policy,

18 not an Air Tool policy, that triggered that

19 reduction based upon an obsolescence reserve,

20 correct?

21 A. To be clear, it's a GAAP policy. Any

22 company who's purporting to produce financial

23 statements under GAAP would have to have that

24 policy.

25 Q. Well, but you don't know if it was a

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2 policy of Air Tool. You do know it was a policy

3 of Hy-Tech, correct?

4 A. That's correct.

5 Q. Okay. Again, if we look at the

6 Section 3.13 of the asset purchase agreement --

7 that would be Plaintiff's Exhibit 16. I'll give

8 you a moment to get there.

9 A. Okay.

10 Q. "Inventory is supposed to consist of a

11 quality and quantity useable in the ordinary

12 course of the business of seller."

13 Do you see that language?

14 A. Yes.

15 Q. So that would be a -- whether

16 something is in quantity or quality usable will be

17 defined by the ordinary course of the business of

18 the seller under this contract. Isn't that right?

19 A. Well, it would be defined by generally

20 accepted accounting principles.

21 Q. Well, the asset purchase agreement

22 uses this specific language that I just had you

23 read, doesn't it?

24 A. Yeah, that's what's in the agreement,

25 yes.

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2 this agreement is the business as it was operated

3 by Air Tool. Isn't that right?

4 A. Yes.

5 Q. And it makes all the sense in the

6 world, if signing an agreement before the sale of

7 assets, of course, it's the business of Air Tool,

8 correct?

9 MR. MUETHING: Objection, form.

10 A. Yes.

11 Q. Did you take into account the ordinary

12 course of Air Tool's business or the present

13 circumstances of Air Tool's business in

14 determining what inventory should be noted as

15 obsolescent reserve?

16 A. I'm not sure I'm understanding the

17 question. Maybe you could rephrase it.

18 Q. I'd be glad to.

19 You made an obsolescence reserve of

20 126-plus thousand dollars against the Air Tool

21 inventory, correct?

22 A. Yes.

23 Q. In doing that, taking into account

24 what -- what was the inventory from the

25 perspective of the ordinary course of Air Tool's

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2 Q. And doesn't this agreement define the

3 transaction between Air Tool and Hy-Tech?

4 A. Yes.

5 Q. And so inventory is required here to

6 consist of a quality and quantity usable in the

7 ordinary course of the business of the seller.

8 Isn't that true?

9 A. Yes.

10 Q. And then drop down to the end of that

11 paragraph: "The quantities of each item of

12 inventory are not excessive but are reasonable in

13 the present circumstances of the Business."

14 Do you see that language?

15 A. Yes.

16 Q. Isn't the capital B, Business, isn't

17 that Air Tool?

18 A. I'm sorry. Say that again?

19 Q. Do you see the word "Business" is

20 capitalized?

21 A. Yes.

22 Q. That's a defined term, isn't it?

23 A. Typically, capitalization would be a

24 defined term, yes.

25 Q. Okay. And the business in this -- in

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2 business for the present circumstances of Air

3 Tool's business?

4 MR. MUETHING: Objection, form.

5 A. I'm not exactly sure what you're

6 asking, but, again, I'm not -- your question seems

7 a bit confusing to me.

8 Q. All right. Let me try it again.

9 You acknowledge you took an

10 obsolescent reserve of more than \$126,000 against

11 Air Tool's inventory, correct?

12 A. Correct.

13 Q. Did you do that because that was

14 something that was done in the ordinary course of

15 business of Air Tool?

16 A. In the ordinary course of business,

17 you would write -- you would have a reserve for

18 inventory that is not sellable, so --

19 Q. And I appreciate your answer, but it

20 doesn't answer my question.

21 In taking that obsolescent reserve,

22 did you do so taking into account the ordinary

23 course of business of Air Tool?

24 MR. MUETHING: Objection.

25 Q. I'm sorry, your answer was?

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2 A. Yes.

3 Q. And how did you do that?

4 Well, how did you know what the

5 ordinary course of business of Air Tool was?

6 MR. MUETHING: Objection, compound.

7 A. In the ordinary course of business, if

8 you're applying generally accepted accounting

9 principles, you are required to place a reserve on

10 non-sellable inventory. There is no wiggle room

11 there. Otherwise, they would not have had a clean

12 opinion for their audit.

13 Q. Sir, I appreciate your answer, but I'm

14 trying to see how Air Tool fits in, not general

15 accounting principles or any other factors.

16 Since the contract calls for you to

17 take into account the ordinary course of Air

18 Tool's business, did you in taking an obsolescent

19 reserve take into account the ordinary course of

20 Air Tool's business, specifically?

21 A. Yes, yes.

22 Q. How? How?

23 MR. MUETHING: Objection.

24 A. I'm not sure how to answer "how."

25 Q. Well, if you did it, you've got to

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2 until later when we took the inventory.

3 Q. And do you know if the quality and

4 quantity that Air Tool had on hand was sufficient

5 for -- for selling in the ordinary course of

6 business of Air Tool?

7 MR. MUETHING: Objection.

8 A. We relied on their representations to

9 that effect.

10 Q. So you didn't know other than pieces

11 of paper that you saw?

12 A. And their representations to that

13 effect.

14 Q. Okay. And then in terms of the

15 present circumstances of Air Tool -- let's just

16 pick the date of the signature on the contract --

17 on August 13, 2014, did you know what the present

18 circumstances were of the business of Air Tool?

19 A. Could you rephrase? I'm not sure what

20 you mean by the "present circumstances."

21 Q. Well, I can't because that's the

22 contract language of a contract that you, I

23 believe, personally signed, so I have a hard time

24 avoiding the words that you committed to.

25 MR. MUETHING: Objection,

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2 explain to me where you got the information --

3 A. Okay. Well --

4 Q. -- so we would know it wasn't taken

5 into account.

6 A. Okay. They produce product for sale,

7 presumably because they thought they could sell

8 something. That's the ordinary course of

9 business. And we discovered after the closing

10 that it was not sellable.

11 I'm not sure what else to say.

12 Q. What information did you have about

13 the ordinary course of Air Tool prior to

14 August 14, 2014 when your folks took over the

15 Mentor facility?

16 A. We had lots of information. I'm not

17 sure what you're asking.

18 Q. And how did you -- well, I'm asking

19 about inventory, and I'm asking what did you know

20 about Air Tool's inventory and how did you apply

21 that in your obsolescence reserve?

22 A. We knew the types of inventory that

23 Air Tool Service Company had, so we knew the

24 quantity based on what was presented to us.

25 Of course, that was not confirmed

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2 argumentative. Object to the form. It's

3 not even a question.

4 MR. COLLINS: I'm not sure that's an

5 objection, but thank you, Brian.

6 Q. Do you -- did Hy-Tech know the present

7 circumstances of Air Tool -- it's a very simple

8 question -- on August 13, 2014?

9 A. Present circumstances?

10 Q. Based on Section 3.13, the contract

11 that you signed, the last line: "Present

12 circumstances of the" -- initial cap B --

13 "Business"?

14 MR. MUETHING: That's good. Now let

15 him answer.

16 MR. COLLINS: Thank you, Brian.

17 A. To the best of my knowledge, the

18 answer would be "yes."

19 Q. Okay. Well, what did you know about

20 inventory and the present circumstances of the Air

21 Tool business?

22 A. I knew what was represented to us and

23 what was on the sheets of paper.

24 Q. Is that all there is to the present

25 circumstances for the business?

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2 A. With respect to inventory, that's all

3 there is.

4 Q. Whether it could be sold, whether

5 there were customers looking for it, whether

6 customers were returning it, does that have

7 anything to do with the present circumstances?

8 A. Those were -- it was represented to us

9 that it could all be sold.

10 Q. And do you know if they were selling

11 it or not?

12 A. They were selling inventory every day.

13 Q. Do you know if they were having

14 returns from their customers because the products

15 were defective?

16 A. I do know that they had some warranty

17 over time, yes.

18 Q. Was it a -- how big was the warranty

19 claims?

20 A. I don't remember. But I do remember

21 discussing that with Rick. There were definitely

22 warranty claims.

23 Q. Was it a material amount of money to

24 this transactions?

25 A. To my knowledge, the warranty claims

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2 Q. Did that have anything to do with the

3 present circumstances of the business, whether or

4 not a significant customer of Air Tool was

5 returning products because it was defective?

6 A. That would have something to do with

7 the present circumstances of the business.

8 Q. And you don't know about that

9 situation you just told us, correct?

10 A. I don't know about what?

11 Q. You don't know about whether there

12 were returns coming back from TorcUP?

13 A. Again, we didn't -- we only would --

14 we only knew what was told to us and given to us

15 in the form of documentation.

16 Q. Okay. Let's talk about -- let me find

17 it -- Section 3.17.

18 A. 3.17, okay.

19 Q. Tell me when you got it.

20 A. Ownership -- yeah, okay, I got it.

21 Q. So the caption at 3.17 is "Ownership

22 and Condition of Assets." The second sentence

23 reads: "The assets constitute all assets

24 necessary to permit seller to conduct the business

25 as now conducted."

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2 were not material.

3 Q. So what they were making and putting

4 out to their customers wasn't coming back as

5 defective product, was it?

6 A. Well, yes, it was. We're discussing

7 how much of it there was.

8 Q. An infinitesimal -- "infinitesimal

9 nonmaterial amount might have been coming back" is

10 what you said to us?

11 A. I didn't use the word "infinitesimal."

12 Q. How about nonmaterial, a nonmaterial

13 amount might have been coming back?

14 A. To the point of the closing, that was

15 the information we were given, yes.

16 Q. And after the closing, which is -- was

17 there more than a vast material amount coming

18 back?

19 A. Yes -- let me -- coming back? No.

20 Q. And, in fact, TorcUP, the customer

21 that Mr. Ober couldn't get, Air Tool accepts they

22 weren't having a problem with returned, defective

23 product from Air Tool going to TorcUP, were they?

24 MR. MUETHING: Objection, form.

25 A. I don't know.

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2 Did I read that correctly?

3 A. Yeah.

4 Q. Okay. Do you know if the -- if the

5 Okuma MacTurn was functioning prior to August 14,

6 2014 at Air Tool?

7 A. I -- I believe that it was.

8 Q. Okay. And do you know if it was

9 functioning from August 14, 2014 through

10 January 30, 2015?

11 A. I remember there was -- there were

12 issues with the functioning of that machine

13 intermittently. I don't remember the specific

14 dates, but there were definitely issues with the

15 functioning of that machine.

16 Q. And that's not an unusual thing with a

17 complicated CMC machine, is it?

18 MR. MUETHING: Objection.

19 A. Actually, it's quite unusual.

20 Q. Okay. And if it's a -- if it's

21 unusual, there's no one at Hy-Tech who was capable

22 of diagnosing what might be wrong with a

23 complicated piece of equipment like that, is

24 there?

25 A. Could you -- can you rephrase? I'm

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2 not sure what you mean by "diagnosing."

3 Q. Determining exactly what is wrong with

4 a piece of equipment, like the Okuma MacTurn,

5 there was no one at Hy-Tech who was capable of

6 determining why a piece of equipment like that is

7 not functioning. Is that correct?

8 A. No. You would typically bring in the

9 Okuma consultants to make that determination.

10 Q. And that, indeed, is what Hy-Tech did.

11 You had one, if not two outside companies that

12 were experts on Okuma equipment, correct?

13 A. Yes, that's my recollection.

14 Q. Yeah, Mr. Curry told us that there was

15 one, and he had a vague recollection of perhaps

16 another, but you agree with him that that's the

17 procedure, you bring in an outside expert?

18 MR. MUETHING: Objection to form --

19 hold on, Joe.

20 Objection to form. And objection to

21 agree to the testimony he doesn't know

22 about. He can't do that.

23 MR. COLLINS: Thank you, Brian.

24 MR. MUETHING: You may answer, Joe.

25 THE WITNESS: Could you repeat the

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2 who's been offered as a -- in this case thus far.

3 Are you aware of that?

4 A. Yes.

5 Q. Okay. So when we look at

6 Section 3.17(a), the second sentence, "The assets

7 constitute all assets necessary to permit seller

8 to conduct the business that is now conducted," do

9 you know how Air Tool was using the Okuma MacTurn

10 up until August 13, 2014?

11 A. I was informed that it was a critical

12 component of manufacturing their product.

13 Q. Who would have told you that?

14 A. Rick Sabath.

15 Q. And is it -- is that a representation

16 and warranty somewhere in this asset purchase

17 agreement?

18 A. The fact that the MacTurn was critical

19 to their operation, is that what you're asking?

20 Q. Yes, yes.

21 A. Well, all the equipment -- so MacTurn

22 is not specifically referenced in the asset

23 purchase agreement, other than it's part of the

24 schedule attached to the agreement.

25 Q. If you look at Section 2.4.1(j) of

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2 question, please?

3 MR. COLLINS: Could the court reporter

4 read it back, please?

5 (Record read.)

6 A. I would agree that that is standard,

7 yes.

8 Q. And so, so far in this case, we've had

9 three witnesses. That would be you, Mr. Curry,

10 and Mr. Aloï.

11 Do you know that?

12 A. I was aware of that.

13 Q. And Mr. Aloï is a person with a

14 financial services background, a CPA, correct?

15 A. Correct.

16 Q. And that's the same with you, you're a

17 person with a financial services CPA background,

18 correct?

19 A. That is my education, yes.

20 Q. Yes. And you've had certainly

21 management experience that you described earlier

22 in your testimony, but I guess what I want to make

23 a distinction is, you're not an engineer?

24 A. I am not, no, sir.

25 Q. And so Mr. Curry is the only engineer

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2 that asset purchase agreement -- tell me when you

3 have it.

4 A. Okay.

5 Q. That section reads:

6 "Any and all liability or obligation

7 arising out of that certain litigation style

8 Gosiger, Inc., d/b/a Gosiger Machine Tools versus

9 Air Tool Service Companies, d/b/a Atsco, Inc.,

10 pending in the Court of Common Pleas, Lake County,

11 Ohio," and then it cites to a case number.

12 Do you know what that reference was

13 to?

14 A. I -- I remember it having -- I don't

15 specifically remember.

16 Q. Does the fact that this was a repair

17 company that had not done adequate repairs to this

18 particular Okuma, does that -- MacTurn, does that

19 refresh your recollection at all?

20 A. Yes, if that's what this is referring

21 to, I do remember a conversation or conversations

22 around a -- an outside service company doing

23 inadequate work regarding the repair of some piece

24 of equipment.

25 Q. And that was part and parcel of how

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2 Air Tool was conducting its business through

3 August 13, 2014, wasn't it?

4 MR. MUETHING: Objection.

5 A. I'm not sure what -- what you're -- is

6 that a question?

7 Q. It is a question.

8 A. What is the question? What is the

9 question?

10 Q. The fact that a piece of equipment was

11 being subjected to \$60,000 worth of repairs is

12 part of how Air Tool was conducting its business

13 on August -- through August 13, 2014, isn't it?

14 A. Yes.

15 Q. In your view, as a financial and

16 business professional, are you in a position to

17 tell the Court what factors caused the Okuma

18 MacTurn not to work?

19 A. Correct, correct.

20 Q. Okay. We've uploaded all those

21 exhibits earlier that were part of your closing

22 binder.

23 Could you look at Plaintiffs'

24 Exhibit 18.

25 A. Okay. I have it up.

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2 A. Yes, that looks like my handwriting.

3 Q. And so at the bottom, tell me if I'm

4 reading this correctly, it's a reference: "There

5 is no inventory obsolescence policy or reserve.

6 Will be established at closing." Is that correct?

7 A. Yes.

8 Q. And was that in reference to a reserve

9 that Hy-Tech was going to establish or was it a

10 reserve that Air Tool was going to establish?

11 A. It would be Hy-Tech's policy.

12 Q. Okay. And then if we go to

13 page HY0605.

14 A. Okay.

15 Q. And I believe this confirms in

16 typewritten form what you just said. The last

17 paragraph reads, I think:

18 "At closing, we will establish an

19 inventory reserve based on the standard Hy-Tech

20 approach. For fair value accounting purposes, it

21 will be treated as a trade reduction of the

22 opening inventory value."

23 Did I read that correctly?

24 A. Yes.

25 Q. And would that have been something

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2 Q. All right. And tell the Court what at

3 least the first number of pages are of Plaintiffs'

4 Exhibit 18.

5 It looks like a report to your company

6 by CohnReznick for purposes of preparing to do

7 this transaction with Air Tool. Is that right?

8 A. That's what it looks like, yeah.

9 Q. Okay. And then if I can direct your

10 attention to the page that's got the Bates number

11 of HY0603.

12 A. 0603, okay, yeah.

13 MR. MUETHING: Tim, I'm sorry, I was

14 asking a question, but I was on mute.

15 You said 0603?

16 MR. COLLINS: Yes.

17 MR. MUETHING: Thank you, sir.

18 Q. Let me know when you get there.

19 A. Yeah, I'm just getting it right-side

20 up.

21 Q. Yeah, sorry.

22 A. Sorry, wrong one.

23 Okay.

24 Q. So the handwriting on there is yours.

25 Am I correct?

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2 that you would have included in -- on this

3 particular page?

4 A. I'm sorry. I didn't hear your last

5 part you said. Say that again, please?

6 Q. Yes. I'm sorry.

7 Would this have been something that

8 you included on this particular page?

9 A. Me, meaning those were my notes or

10 my -- my -- I'm not sure what you're saying, me.

11 Q. Yes, I'm asking if these are -- these

12 are your ideas and this is your set of notes?

13 A. This is -- well, again, this document

14 is -- you said 604 or 605?

15 Q. 605.

16 A. Well, there's two 605s. Okay. Hold

17 on a second. Sorry. I was looking at the wrong

18 document.

19 Q. The one I'm looking at has Molino 7 --

20 A. Oh, yes. Here it is, yes, yes. I'm

21 sorry, I was looking at -- that is me. I would

22 have written this, yes.

23 Q. Okay. So those are your words: "At

24 closing, we will establish an inventory reserve

25 based on the standard Hy-Tech approach."

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2 Those are your words, correct?

3 A. Yes.

4 Q. And that's what you did when you made

5 an inventory obsolescence charge against Air

6 Tool's inventory, correct?

7 A. No, that's not what this is referring

8 to. Sorry.

9 Q. What is this referring to?

10 A. What this refers to is our internal

11 algorithms that we used to calculate inventory

12 reserves. It would have nothing to do with -- it

13 would have nothing to do with between the buyer

14 and seller in a transaction.

15 Q. So this was -- well, the previous page

16 we looked at, HY063, you said that a reserve will

17 be established at closing.

18 A. Yep, I did.

19 Q. So 0605 is a different reserve in

20 addition to the one --

21 A. No, they're referring to the same

22 thing.

23 We are -- we perform certain -- P&F is

24 a very conservative company when it comes to

25 inventory reserves. Having nothing to do as

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2 A. Oh, 813, okay.

3 Okay. I think I'm there. All right.

4 The first couple of sentences read -- and tell me

5 if I'm reading it correctly:

6 "During the prior 12 months, seller

7 was involved with two suits, Gosiger Machine Tools

8 sued Atsco for unreimbursed machine repairs

9 totaling" 70,000 -- or "70K. The one is in the

10 process of being settled for 7,500. At the

11 closing, the seller will retain this liability."

12 Did I read that correctly?

13 A. Yes.

14 Q. Does that refresh your recollection

15 that repairs -- you were aware that repairs had

16 been done on the Okuma MacTurn by Gosiger

17 Machinery prior to the closing of the transaction?

18 A. I can't say that I specifically

19 remember them being made to the Okuma, but I do

20 remember the lawsuit.

21 Q. If you look further at page HY0879.

22 A. Okay.

23 Q. To the left of the first box is, I

24 think, the words "outsource." Is that correct?

25 A. Yeah, that's what it looks like.

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2 between -- the agreement between a target and P&F

3 in any acquisition, regardless of our findings in

4 due diligence or thereafter, we have a very

5 specific approach to applying inventory reserves

6 that generally have nothing to do with the asset

7 purchase agreement or as any -- any issue

8 regarding the buyer and the seller.

9 That's what this is referring to.

10 Q. So -- but you did make an obsolescence

11 reserve against Air Tool's inventory that you

12 acquired in this transaction?

13 A. Yes. But if you'll notice, on 604,

14 the second sentence says: "If this is supplied,

15 we can apply our obsolescence formula."

16 That's not what we -- that

17 obsolescence formula has nothing to do with the --

18 the inventory acknowledgement statement. They're

19 separate issues, apples and oranges.

20 Q. If we go to 0813, and that's in

21 exhibit -- no -- I'm sorry -- that's in

22 Exhibit 19. I apologize.

23 Exhibit 19, HY0813.

24 A. I'm sorry, what's the number again?

25 Q. Yes, HY0813.

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2 Q. And that's with reference to the Okuma

3 type LT200 piece of equipment.

4 Do you see that?

5 A. Yes.

6 Q. Was that piece of equipment part of

7 the transaction with Air Tool?

8 A. I don't know. I'd have to -- you'd

9 have to give me -- you'd have to give me a minute

10 on this document to see if it would be.

11 If this is a -- if this is a -- I

12 apologize. If this is a schedule to the

13 agreement, the answer --

14 Q. Well, I can help you with another

15 document, sir, if that will refresh your

16 recollection, and that's HY0887.

17 A. 887?

18 Q. Do you have that?

19 A. Just give me one minute.

20 Q. Sure.

21 A. Okay. The preliminary terms document?

22 Q. Yes. Paragraph No. 10 reads: "Assets

23 to be purchased will exclude the Okuma LT200." Is

24 that correct?

25 A. Yes, that's what it says.

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2 Q. So what do the words "outsource" mean

3 next to the Okuma type LT200 when you wrote them?

4 A. I believe Rick Sabath represented to

5 me that the company didn't really need it, that

6 you could get by by outsourcing those needs

7 elsewhere. He assured me that we'd be fine

8 without the second Okuma.

9 Q. And so that would mean in the ordinary

10 course of business of Air Tool, prior to

11 August 14, 2014, that's how they conducted

12 business, they didn't necessarily need an Okuma

13 MacTurn?

14 A. That was his representation.

15 Q. And you went through a closing subject

16 to that representation, didn't you?

17 A. Absolutely.

18 MR. COLLINS: Let me just have a

19 moment.

20 (Pause.)

21 MR. COLLINS: If you'd be kind enough

22 to find Exhibit 22.

23 (Plaintiffs' Exhibit 22, document, was

24 marked for identification at this time.)

25 A. Oh, did you just send that?

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2 Do you see that line?

3 A. Yes, yes.

4 Q. Did you know that your lawyers have

5 dismissed any claims related to Michigan Pneumatic

6 in this case?

7 MR. MUETHING: Objection.

8 A. I didn't hear what you -- you got a

9 little muffled. I'm sorry. I didn't hear the

10 question.

11 MR. MUETHING: Objection.

12 Tim, this is beyond the scope of

13 anything we asked him on direct, and he's

14 not a lawyer, nor is he to be asked those

15 things that occurred between --

16 conversations between counsel and the

17 clients, and I'll instruct him not to answer

18 for that reason.

19 Q. Sir, you know that your counsel has

20 dismissed any claims against Air Tool related to

21 Michigan Pneumatic and the ATA grinder inventory.

22 You know that, right?

23 MR. MUETHING: Same instruction.

24 You don't need to answer that, Joe.

25 Q. You know that pursuant to paragraph 2,

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2 Q. No.

3 A. Oh, I apologize. Do you mean on this

4 same document?

5 Q. No, no. Plaintiffs' Exhibit 22 is

6 another one of the -- we sent you earlier in this

7 deposition.

8 A. Actually, I thought it was 17 to 21.

9 So 22 is a new one, so...

10 Q. Yes, it's a new one for our

11 conversation.

12 A. Okay. So let me see if -- I've got to

13 upload it.

14 Q. Okay.

15 A. Hold on.

16 Okay. I've got it.

17 Q. Can you tell us what Exhibit 22 is?

18 A. Give me a second.

19 It looks like the document is required

20 per the agreement where we acknowledge any issues

21 we've got with respect to the inventory.

22 Q. Okay. And in numbered paragraph 1,

23 that talks about Michigan Pneumatic, the ATA

24 grinder inventory totaling \$93,313, which would

25 require substantial modification to be salable.

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2 it says here that there was no market for two

3 tools -- Michigan Pneumatic Tools, and there's a

4 couple of SKUs and prices.

5 You know that that claim has been

6 dismissed by your lawyer in this case, don't you?

7 MR. MUETHING: Same objection.

8 You don't need to answer that, Joe.

9 Q. Paragraph 3 talks about TorcUP part

10 that is unusable and non-conforming.

11 You know that the -- there's no TorcUP

12 claim -- the TorcUP claim that was in this case

13 has been dismissed by your lawyer, right?

14 MR. MUETHING: Same objection.

15 You don't need to answer that, Joe.

16 Q. Paragraph 4 --

17 MR. COLLINS: I mean, you can

18 stipulate to these things, Brian, and then I

19 won't ask that these claims have been

20 dismissed.

21 MR. MUETHING: We'll stipulate that

22 the record of the case is reflected as

23 presently between the parties.

24 MR. COLLINS: Well, I'd like to --

25 MR. MUETHING: Asking the witness to

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2 interpret prior Court decisions and prior

3 Court filings is not what he's here for, and

4 it's outside the scope of our direct

5 examination.

6 And I'll instruct him not to answer.

7 If you want to stipulate that you

8 would ask him all the same questions, then

9 we'd give him all the same instructions.

10 MR. COLLINS: Well, I would just ask

11 you to stipulate that there are no claims to

12 these paragraphs 1, 2, 3, 4 in this case.

13 MR. MUETHING: You can argue that with

14 the Court. We -- I respect your position

15 with respect to that line.

16 MR. COLLINS: Okay.

17 BY MR. COLLINS:

18 Q. And so because your lawyer doesn't

19 want to stipulate to it, I'm going to ask you: If

20 there's a reference to cost of labor to rework

21 certain set of parts that are described in

22 paragraph 4, do you know that that claim has been

23 dismissed in this case?

24 MR. MUETHING: Objection.

25 Same instruction, and you don't need

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1 JOSEPH MOLINO

2 Do you recall that?

3 A. Yes.

4 Q. And your description in your

5 October 16 letter is that you were sending this as

6 an inventory acknowledgment letter, correct?

7 A. Yes.

8 Q. Was there ever another letter sent

9 after October 16, 2014 constituting an amendment

10 to the inventory acknowledgment letter?

11 A. There was lack of communication as

12 between us understand Rick Sabath. I don't

13 remember if another letter was sent.

14 Q. So the contract has a specific

15 requirement, and you don't know if you fulfilled

16 that requirement. Is that true?

17 A. I do not recall.

18 MR. COLLINS: If you can give me a

19 five-minute recess here, I would pretty much

20 appreciate it.

21 MR. MUETHING: No problem.

22 MR. COLLINS: Thank you.

23 VIDEOGRAPHER: We're going off the

24 record at 2:08 p.m.

25 (Recess.)

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1 JOSEPH MOLINO

2 to answer that.

3 Q. The next paragraph reads:

4 "Additionally there has been an accounts

5 receivable writeoff of Columbus Castings in the

6 amount of \$27,082.53."

7 Was that amount paid?

8 THE WITNESS: Do I answer that one?

9 MR. MUETHING: Yes.

10 A. I believe it -- we were informed after

11 this letter, it was paid.

12 Q. Okay. Great.

13 Was there ever an amendment to the

14 October 16, 2014 inventory acknowledgement letter

15 sent to Air Tool?

16 A. I don't remember.

17 Q. Do you think you've got a contractual

18 duty to provide a letter like that?

19 A. Are you asking --

20 MR. MUETHING: Objection.

21 He's not a lawyer and is not -- the

22 question is vague and has no foundation.

23 Q. We went over the language in the asset

24 purchase agreement where an acknowledgement letter

25 was required to be sent to Air Tool by Hy-Tech.

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1 JOSEPH MOLINO

2 VIDEOGRAPHER: This marks the start of

3 Media No. 4. We are back on the record at

4 2:21 p.m.

5 BY MR. COLLINS:

6 Q. Thank you.

7 Mr. Molino, I just have a couple more

8 to follow up with you on.

9 Do you know what the last monthly

10 financial statement was that Hy-Tech received from

11 Air Tool prior to closing the transaction?

12 A. I don't remember, but that's typically

13 referenced in the asset purchase agreement.

14 Q. So whatever it says in Plaintiffs'

15 Exhibit 16, that would be the last required

16 financial statement provided to Air Tool, correct?

17 A. That's correct.

18 Q. Right. And so between the last

19 financial statement prepared until August 13,

20 2014, was there a -- a regular closing of the

21 books, as it were, before the transaction closed?

22 A. I -- I don't remember. Obviously, we

23 were not responsible for those financials. I

24 don't remember.

25 Q. And the calculation that you did in

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1 JOSEPH MOLINO

2 your -- your October 16, 2014 letter assumed that

3 the inventory counts that you folks did were

4 accurate. Is that correct?

5 A. Yes.

6 MR. COLLINS: Very good. I believe

7 that is -- those are all the questions that

8 I have for you at this time.

9 MR. MUETHING: Thanks -- excuse me --

10 thanks, Tim.

11 Joe, the Civil Rules provide you with

12 two options: One would be to read and sign

13 your deposition confirming that there were

14 no errors in the transcription,

15 notwithstanding everybody's efforts to be

16 accurate.

17 THE WITNESS: Okay.

18 MR. MUETHING: And your second option

19 is to waive that option and just be done

20 with it.

21 I can't make that decision for you,

22 but I always encourage everyone to take

23 advantage of the opportunity to read their

24 deposition.

25 So, for the record, what would you

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1 MR. MUETHING: Okay. That would be

2 fine. We will get you a copy of it then.

3 MR. COLLINS: Okay. If we can go off

4 the record, Brian, and have a quick

5 conversation, that would be great.

6 VIDEOGRAPHER: This concludes the

7 deposition. We are going off the record at

8 2:24 p.m.

9 (Whereupon the proceedings were

10 concluded at 2:24 p.m.)

11 oOo

12 I, JOSEPH MOLINO, the witness herein,

13 do hereby certify that the foregoing

14 testimony of the pages of this deposition to

15 be a true and correct transcript, subject to

16 the corrections, if any, shown on the

17 attached page.

18

19

20 JOSEPH MOLINO

21 Subscribed and sworn to before me this

22 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

23 \_\_\_\_\_

24 \_\_\_\_\_

25 (Notary Public)

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1 JOSEPH MOLINO

2 like to do?

3 THE WITNESS: Can I ask a question?

4 Does the recording of this constitute

5 my -- my deposition?

6 MR. MUETHING: That's a good question,

7 Joe.

8 What I'm referring to is the

9 typewritten transcript that the court

10 reporter is making right now and that they

11 may or may not have misspelled something or

12 misheard you, and this gives you an

13 opportunity to read it and make sure that

14 the written words accurately reflect what

15 you think you said, and so --

16 THE WITNESS: Then I would like to do

17 that.

18 (Continued on next page for jurat.)

19

20

21

22

23

24

25

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1 CERTIFICATE

2

3 I, AMY A. RIVERA, a Certified Shorthand

4 Reporter, Registered Professional Reporter,

5 Certified LiveNote Reporter, and Notary Public of

6 the State of New York, do hereby certify that prior

7 to the commencement of the examination JOSEPH

8 MOLINO, was duly sworn by me to testify the truth,

9 the whole truth and nothing but the truth.

10 I DO FURTHER CERTIFY that the foregoing is

11 a true and accurate transcript of the testimony as

12 taken stenographically by and before me at the time,

13 place and on the date hereinbefore set forth.

14 I DO FURTHER CERTIFY that I am neither a


15 relative nor employee nor attorney nor counsel of

16 any of the parties to this action, and that I am

17 neither a relative nor employee of such attorney or

18 counsel, and that I am not financially interested in

19 the action.

20 

21 AMY A. RIVERA

22 Notary Public of the State of New York

23 My commission expires December 6, 2021

24 License No. XI00939

25 Dated: November 18, 2020

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